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Contents

Federal Register

Vol. 62, No. 249

Tuesday, December 30, 1997

Agency for Health Care Policy and Research
NOTICES
Meetings:
Health Care Policy and Research Special Emphasis Panel, 67874

Agency for International Development
NOTICES
Agency information collection activities:
Proposed collection; comment request, 67892

Agricultural Marketing Service
RULES
Onions grown in—
Texas, 67694–67696

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Federal Crop Insurance Corporation
See Forest Service

Animal and Plant Health Inspection Service
PROPOSED RULES
Plant-related quarantine, domestic:
Mexican fruit fly, etc.; high-temperature forced-air treatments for citrus fruits, 67761–67763

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Allied Waste Industries, Inc., 67896–67897
Tom Paige Catering, Inc., et al., 67897–67901

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Commerce Department
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
China, 67827–67829
Egypt, 67829
Hong Kong, 67830–67831
India, 67831–67832
Korea, 67833–67834
Malaysia, 67834–67836
Mexico, 67836
Sri Lanka, 67837
Taiwan, 67837–67839
Turkey, 67839–67841

Commodity Futures Trading Commission
NOTICES
Customer funds denomination and depositories location; concept release, 67841–67847
Meetings; Sunshine Act, 67847

Comptroller of the Currency
RULES
Risk-based capital:
Market risk, 68064–68069

Customs Service
PROPOSED RULES
Customs relations with Canada and Mexico:
Land border carrier initiative program, 67765–67770

Defense Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 67847
Meetings:
Defense Intelligence Agency Joint Military Intelligence College Board of Visitors, 67847–67848
Defense Partnership Council, 67848
Electron Devices Advisory Group, 67848–67849
Wage Committee, 67849

Drug Enforcement Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 67901–67902

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 67849–67850
Grants and cooperative agreements; availability, etc.:
Bilingual education and minority languages affairs—
Career ladder program, 68088–68109
Teachers and personnel grants, 68112–68133
National Assessment of Educational Progress secondary analysis program, 68072
Meetings:
Federal Interagency Coodinating Council, 67850
Postsecondary Education Improvement Fund National Board, 67850–67851

Employment and Training Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Welfare-to-work program, 67902–67918

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Electricity export and import authorizations, permits, etc.:
Sierra Pacific Power Co. et al., 67851

Environmental Protection Agency
RULES
Air pollution control; new motor vehicles and engines:
New nonroad compression-ignition engines at or above 37 kilowatts—
Nonroad engine and vehicle standards; State regulation preemption, 67733–67736
Air programs:
Stratospheric ozone protection—
Motor vehicle air conditioners servicing and refrigerant recovery and disposal, 68026–68057

Hazardous waste:
Project XL program; site-specific projects—
Molex, Inc., facility, Lincoln, NE; withdrawn, 67736
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 67736–67737
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Hazardous waste combustors; total mercury and particulate continuous emissions monitoring systems, etc., 67788–67818
Air pollution; standards of performance for new stationary sources:
Volitale organic compound (VOC) emissions—
Automobile refinish coatings, 67784–67788
Air pollution control; new motor vehicles and engines:
New nonroad compression-ignition engines at or above 37 kilowatts—
Nonroad engine and vehicle standards; State regulation preemption, 67818–67819
NOTICES
Agency information collection activities:
Proposed collection; comment request, 67861–67865
Clean Air Act:
Citizens suits; proposed settlements—
Appalachian Power Co. et al., 67865
Superfund; response and remedial actions, proposed settlements, etc.:
Pruitt & Grace Site, OH, 67865

Federal Aviation Administration
RULES
Airmen certification:
Pilot, flight instructor, ground instructor, and pilot school certification rules
Comments disposition and conforming amendments, 68136–68138
Airworthiness directives:
Aviat Aircraft Inc., 67708–67711
Jet routes, 67713–67714
Restricted areas, 67711
VOR Federal airways, 67711–67712

Federal Communications Commission
NOTICES
Common carrier services:
Telecommunications relay services fund; contribution factor and payment formula, 67866
Meetings:
North American Numbering Council, 67866–67867

Federal Crop Insurance Corporation
RULES
Freedom of Information Act; implementation, 67693–67694

Federal Deposit Insurance Corporation
RULES
Risk-based capital
Market risk, 68064–68069

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Arizona et al., 67737–67742,
Arkansas et al., 67742–67746
PROPOSED RULES
Flood elevation determinations:
Arkansas et al., 67819–67821
NOTICES
Disaster and emergency areas:
Iowa, 67867

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Louisville Gas & Electric Co. et al., 67855–67857
Northern States Power Co. et al., 67857–67861
Applications, hearings, determinations, etc.:
Howard/Avista Energy, LLC, 67851–67852
North American Energy, Inc., 67852
Northern Natural Gas Co., 67852–67853
Transcontinental Gas Pipe Line Corp., 67853
Vector Pipeline L.P., 67853–67854

Federal Highway Administration
PROPOSED RULES
Motor carrier safety standards:
Leased and interchanged vehicles—
Equipment identification and receipt requirements; commonly-owned and controlled motor carriers exemption, 67821–67823

Federal Maritime Commission
NOTICES
Agreements filed, etc., 67867–67868

Federal Reserve System
RULES
Risk-based capital:
Market risk, 68064–68069
NOTICES
Meetings; Sunshine Act, 67868

Federal Trade Commission
NOTICES
Prohibited trade practices:
Shell Oil Co. et al., 67868–67872

Fish and Wildlife Service
NOTICES
Endangered and threatened species:
Recovery plans—
Florida panther, 67886–67887
Environmental statements; availability, etc.:
Incidental take permits—
San Diego County, CA; California gnatcatcher, 67887–67888
Natural resource damage assessment plan; availability, etc.:
Lower Fox River/Green Bay, WI, 67888

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
New drug applications—
Chlortetracycline, sulfathiazole, and penicillin, 67725
Sponsor name and address changes—
Alpharma Inc., 67724–67725
PROPOSED RULES
Food for human consumption:
Food labeling—
Hard candies and breath mints; reference amount and serving size declaration, 67775–67780
Nutrient content claims; ''healthy'' definition, 67771–67775
Human drugs:
Labeling of drug products (OTC)—
Standardized format, 67770–67771

NOTICES
Agency information collection activities:
Proposed collection; comment request, 67874–67877
Animal drugs, feeds, and related products:
New drug applications—
Hoffmann-La Roche, Inc.; approval withdrawn, 67877
Meetings:
Xenotransplantation; Public Health Service policy development; workshop, 67877–67878
Prescription drugs; user fees (1998 FY); correction, 67878
Reporting and recordkeeping requirements, 67878–67879
Reports and guidance documents; availability, etc.:
Food-effect bioavailability and bioequivalence studies; industry guidance, 67879–67880
In vivo bioequivalence studies based on population and individual bioequivalence approaches; industry guidance, 67880–67881

Foreign Assets Control Office
RULES
Sanctions; blocked persons, specially designated nationals, terrorists, and noarcotics traffickers, and blocked vessels; lists consolidation
Additional designations and removals, 67729–67733

Forest Service
NOTICES
Environmental statements; notice of intent:
Tahoe National Forest, CA; San Juan Fuels Management, Wildlife Habitat Management, and Timber Harvest Projects, 67824
Meetings:
Olympic Provincial Interagency Executive Committee Advisory Committee, 67824
National Forest System lands:
Special permits; fee schedule—
Communications facilities, 68076–68087

General Accounting Office
NOTICES
Meetings:
Federal Accounting Standards Advisory Board, 67872

General Services Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 67872
Federal travel:
Centralized household goods traffic management program (CHAMP); broker and direct move management services provider participation, 67872–67873

Geological Survey
NOTICES
Grant and cooperative agreement awards:
Georgia-Pacific Corp., 67888

Health and Human Services Department
See Agency for Health Care Policy and Research
See Food and Drug Administration
See Health Care Financing Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Meetings:
National Bioethics Advisory Commission, 67873
Orphan Products Board, 67873–67874

Health Care Financing Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 67881
Committees; establishment, renewal, termination, etc.:
Practicing Physicians Advisory Council, 67881–67882

Housing and Urban Development Department
PROPOSED RULES
Federal National Mortgage Association (Fannie Mae) and Federal Home Mortgage Corporation (Freddie Mac):
Non-mortgage investments; regulatory requirements, 68060–68061
NOTICES
Grant and cooperative agreement awards:
Community development work study program, 67885–67886

Immigration and Naturalization Service
PROPOSED RULES
Nonimmigrant classes:
H-1B and H-2B classification petitions; tracking usage, 67764–67765

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Land Management Bureau
See National Park Service
See Reclamation Bureau

Internal Revenue Service
RULES
Income taxes:
Building demolition; definition of structure, 67725–67726
Empowerment zone employment credit; qualified zone employees, 67726–67728
PROPOSED RULES
Income taxes:
Qualified plans and individual retirement plans; required distributions, 67780–67784

International Development Cooperation Agency
See Agency for International Development

Justice Department
See Antitrust Division
See Drug Enforcement Administration
See Immigration and Naturalization Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 67892–67893
Pollution control; consent judgments:
Action Manufacturing, Inc., 67893
Alfa-Laval, Inc., et al., 67893–67894
Bartlett, James, et al., 67894
Chrysler Corp. et al., 67894–67895
Doe, Jane, as executrix of Edmund Barbera estate, et al., 67895
Gas Transportation Corp., 67895
Taylor, J.M., estate, et al., 67895–67896

Labor Department
See Employment and Training Administration

Land Management Bureau
NOTICES
Meetings:
National Historic Oregon Trail Interpretive Center Advisory Board, 67888–67889
Resource advisory councils—
Front Range, 67889
Motor vehicle use restrictions:
Colorado, 67889
Realty actions; sales, leases, etc.:
Oregon, 67889–67890

Legal Services Corporation
RULES
Assisted suicide, euthanasia, and mercy killing; restriction, 67746–67749

National Aeronautics and Space Administration
NOTICES
Meetings:
Advisory Council task forces, 67918
Aeronautics and Space Transportation Technology Advisory Committee, 67918
Space Science Advisory Committee, 67918

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 67918–67921
Privacy Act:
Systems of records, 67920–67921

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Occupant crash protection—
Air bags; retrofit on-off switches; correction, 67752–67754
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Panzo Auto Development Co., 67931–67932

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 67882
National Center for Research Resources, 67882–67883
National Institute of Allergy and Infectious Diseases, 67883
National Institute on Drug Abuse, 67883–67884
National Library of Medicine, 67884

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands groundfish, 67754–67755
Groundfish observer program, 67755–67760
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish, 67714–67723
Northeastern United States fisheries—
Summer flounder, 67754
Ocean and coastal resource management:
Marine sanctuaries—
Gulf of the Farallones National Marine Sanctuary; name change from Point Reyes/Farallon Islands National Marine Sanctuary; correction, 67723–67724
NOTICES
Meetings:
Federal Investment Task Force, 67824–67825
Gulf of Mexico Fishery Management Council, 67825
Marine Fisheries Advisory Committee, 67826
Sea Grant Review Panel, 67826

National Park Service
NOTICES
Meetings:
Death Valley National Park Advisory Commission, 67890
National Register of Historic Places:
Pending nominations, 67890

National Science Foundation
NOTICES
Meetings:
Civil and Mechanical Systems Special Emphasis Panel, 67921
Computer and Communications Research Special Emphasis Panel, 67921
Materials Research Special Emphasis Panel, 67921–67922
Physics Special Emphasis Panel, 67922
Undergraduate Education Special Emphasis Panel, 67922

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Commonwealth Edison Co., 67922–67923

Pension Benefit Guaranty Corporation
RULES
Regulations; reorganization, renumbering, and reinvention; Federal regulatory reform; correction, 67728–67729
NOTICES
Reporting and recordkeeping requirements, 67924

Personnel Management Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 67924–67925
Submission for OMB review; comment request, 67925–67926

Public Health Service
See Agency for Health Care Policy and Research
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Railroad Retirement Board
RULES
Railroad Retirement Act:
Court decree or court-approved property settlement; payments, 67724

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Milltown Hill Project, OR, 67890–67891
Meetings:
Bay-Delta Advisory Council, 67891–67892

Research and Special Programs Administration
NOTICES
Pipeline Risk Management Demonstration Program:
Participants—
Shell Pipe Line Corp., 67932–67936

Securities and Exchange Commission
PROPOSED RULES
Securities:
Brokers and dealers capital reporting requirements—
Nationally recognized statistical rating organization definition, 68018–68024
Net capital rule—
Capital requirements for broker-dealers; net worth charges (''haircuts'') for computing interest rate instruments, 67996–68011
Capital requirements for broker-dealer's proprietary positions; statistical models, 68011–68018
Over-the-counter derivatives dealers, 67940–67995
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 67926–67927
National Association of Securities Dealers, Inc., 67927–67930

State Department
NOTICES
Arms Export Control Act:
Export licenses; Congressional notifications, 67930
Organization, functions, and authority delegations:
Under Secretary of State for Arms Control and International Security Affairs et al., 67930

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 67884–67885

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Charlotte, NC, 67936–67937
Effingham Railroad Co., 67937
Illinois Railnet, Inc., 67937
North American Railnet, Inc., 67937–67938

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Thrift Supervision Office
RULES
Fiduciary powers of Federal savings associations; revision; and Community Reinvestment Act regulations; exempt savings associations, 67696–67708

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board
RULES
Acquisition regulations:
Miscellaneous amendments, 67749–67752
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 67930
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 67931

Treasury Department
See Comptroller of the Currency
See Customs Service
See Foreign Assets Control Office
See Internal Revenue Service
See Thrift Supervision Office

Utah Reclamation Mitigation and Conservation Commission
NOTICES
Environmental statements; availability, etc.:
Provo River Restoration Project, 67938

Separate Parts In This Issue

Part II
Securities and Exchange Commission, 67940–68024

Part III
Environmental Protection Agency, 68026–68057

Part IV
Department of Housing and Urban Development, 68060–68061

Part V
Department of the Treasury, Comptroller of the Currency; Federal Deposit Insurance Corporation; Federal Reserve System, 68064–68069

Part VI
Department of Education, 68072

Part VII
Department of Agriculture, Forest Service, 68074–68085

Part VIII
Department of Education, 68088–68109

Part IX
Department of Education, 68112–68133

Part X
Department of Transportation, Federal Aviation Administration, 68136–68138

Reader Aids
Additional information, including a list of telephone numbers, finding aids, reminders, and a list of Public Laws appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
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CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
412 67693
959 67694
Proposed Rules:
300 67761
301 67761

8 CFR
Proposed Rules:
214 67764

12 CFR
3 68064
208 68064
225 68064
325 68064
545 67696
550 67696
563e 67696
571 67696

14 CFR
39 67708
71 (3 documents) 67711, 67712, 67713
73 67711
91 68136
121 68136
142 68136

15 CFR
902 67714
922 67723

17 CFR
Proposed Rules:
200 67940
240 (4 documents) 67940, 67996, 68011, 68018
249 67940

19 CFR
Proposed Rules:
123 67765
142 67765

20 CFR
295 67724

21 CFR
558 (2 documents) 67724, 67725
Proposed Rules:
101 (2 documents) 67771, 67775
201 67770
330 67770
358 67770

24 CFR
Proposed Rules:
81 68060

26 CFR
1 (2 documents) 67725, 67726
Proposed Rules:
1 67780

29 CFR
Ch. XXVI 67728
Ch. XL 67728

31 CFR
Ch. V 67729

40 CFR
82 68028
85 67733
89 67733
260 67736
300 67736
Proposed Rules:
59 67784
60 67788
63 67788
85 67818
89 67818

44 CFR
65 (2 documents) 67737, 67741
67 67742
Proposed Rules:
67 67819

45 CFR
1643 67746

48 CFR
1201 67749
1202 67749
1203 67749
1205 67749
1206 67749
1209 67749
1214 67749
1216 67749
1217 67749
1222 67749
1224 67749
1225 67749
1236 67749
1237 67749
1246 67749
1252 67749

49 CFR
595 67752
Proposed Rules:
376 67821

50 CFR
622 67714
648 67754
679 (2 documents) 67754, 67755

Rules and Regulations

Federal Register
Vol. 62, No. 249
Tuesday, December 30, 1997

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.

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 412

Public Information

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the regulations governing the availability of information to the public found in 7 CFR part 412. The intended effect of this rule is to redesignate FCIC office from whom information may be requested by the public, and the location and type of information to the public.

EFFECTIVE DATE: This rule is effective December 30, 1997.

FOR FURTHER INFORMATION CONTACT: Donna Basset, Paralegal, Appeals, Litigation and Legal Liaison Staff, Risk Management Agency, United States Department of Agriculture, 1400 Independence Avenue, SW, STOP 0807, room 6618–S, Washington, D.C., 20250–0803, telephone number (202) 690–0679.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be exempt and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995, this rule does not contain reporting or record keeping requirements subject to approval by the Office of Management and Budget.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The rule makes only technical changes to the Public Information regulation to update and publish the offices from whom information may be requested by the public and the location. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order No. 12988 on civil justice reform. The provisions of this rule will not have retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions contained herein must be exhausted before action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

Under the Freedom of Information Act (FOIA) affirmative disclosure provisions contained in 5 U.S.C. 552 (a)(1) and (2), FCIC is required to make certain information regarding its organization, operations, and regulations available for public use so the public can deal with FCIC knowledgeably and effectively. The current regulations do not reflect the recent changes to the name and address of the FOIA Officer, changes in addresses and locations, and the type of information available to the public. These changes relate to internal agency management and personnel. The provisions of the Administrative Procedures Act concerning notice and opportunity for comment on agency rulemaking (5 U.S.C. 553) do not apply to the promulgation of agency rules of organization, procedure, or practice. For this reason, these changes are made effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 412

Administrative practice and procedure, Freedom of Information Act, Availability of information to the public.

Final Rule

For the reasons set forth in the preamble, 7 CFR part 412 is revised to read as follows:

PART 412—PUBLIC INFORMATION—FREEDOM OF INFORMATION

Sec.
412.1 General statement.
412.2 Public inspection and copying.
412.3 Index.
412.4 Requests for records.
412.5 Appeals.
412.6 Timing of responses to requests.

Authority: 5 U.S.C. 552 and 7 U.S.C. 1506.

§ 412.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture published at 7 CFR 1.1–1.23, and appendix A, implementing the Freedom of Information Act (5 U.S.C. 552). The Secretary's regulations, as implemented by this part, and the Risk Management Agency (RMA) govern availability of records of the Federal Crop Insurance Corporation (FCIC) as administration of the crop insurance program for FCIC.

§ 412.2 Public inspection and copying.

(a) Members of the public may request access to the information specified in § 412.2(d) for inspection and copying.

(b) To obtain access to specified information, the public should submit a written request, in accordance with 7 CFR 1.6, to the Appeals, Litigation and Legal Liaison Staff, Risk Management Agency, United States Department of Agriculture, 1400 Independence Avenue, SW, STOP 0807, room 6618–S, Washington, DC, 20250–0807, from 9:00 a.m.—4:00 pm., EDT Monday through Friday, except holidays.

(c) When the information requested is not located at the office of the Appeals, Litigation and Legal Liaison Staff, the Appeals, Litigation and Legal Liaison Staff will direct the request to the appropriate office where the information can be obtained. The requester will be informed that the request has been forwarded to the appropriate office.

(d) FCIC will make available for inspection and copying, unless otherwise exempt from publication under sections 552(a)(2)(C) and 552(b):

(1) Final opinions, including concurring and dissenting opinions and orders made in the adjudication of cases; and

(2) Those statements of policy and interpretations that have been adopted by FCIC and RMA and are not published in the **Federal Register**; and

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

§ 412.3 Index.

5 U.S.C. 552(a)(2) requires that each agency publish, or otherwise make available, a current index of all materials available for public inspection and copying. RMA and FCIC will maintain a current index providing identifying information for the public as to any material issued, adopted, or promulgated by the Agency since July 4, 1967, and required by section 552(a)(2). Pursuant to the Freedom of Information Act provisions, RMA and FCIC have determined that in view of the small number of public requests for such index, publication of such an index would be unnecessary and impracticable. Copies of the index will be available upon request in person or by mail at the address stated in § 412.2(b).

§ 412.4 Requests for records.

The Director of the Appeals, Litigation and Legal Liaison staff, RMA located at the above stated address, is the person authorized to receive Freedom of Information Act and to determine whether to grant or deny such requests in accordance with 7 CFR 1.8.

§ 412.5 Appeals.

Any person whose request under § 412.4 is denied shall have the right to appeal such denial. This appeal shall be submitted in accordance with 7 CFR 1.13 and addressed to the Manager, Federal Crop Insurance Corporation, United States Department of Agriculture, 1400 Independence Avenue, SW, STOP 0807, room 6618-S, Washington, DC, 20250–0807.

§ 412.6 Timing of responses to requests.

(a) In general, FCIC will respond to requests according to their order of receipt.

(b) Existing responsive documents or information may be maintained in RMA's field offices. Therefore, extra time may be necessary to search and collect the documents.

Signed in Washington, D. C. on December 22, 1997.

Robert Prchal,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–33828 Filed 12–29–97; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV98–959–1 IFR]

Onions Grown in South Texas; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule decreases the assessment rate established for the South Texas Onion Committee (Committee) under Marketing Order No. 959 for the 1997–98 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of onions grown in South Texas. Authorization to assess Texas onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1997–98 fiscal period began August 1 and ends July 31. The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective December 31, 1997. Comments received by March 2, 1998, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632. 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: Cynthia Cavazos or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1313 East Hackberry, McAllen, Texas 78501; telephone: (956) 682–2833, Fax: (956) 682–5942 or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box

96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the ''order.'' The marketing agreement and 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.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas 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 August 1, 1997, 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.

This rule decreases the assessment rate established for the Committee for the 1997–98 and subsequent fiscal periods from $0.07 to $0.05 per 50-pound container or equivalent.

The Texas 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 South Texas onions. They are familiar with the Committee's needs and with the costs of 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.

For the 1996–97 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee, in a telephone vote, unanimously recommended 1997–98 administrative expenses of $100,000 for personnel, office, and the travel portion of the compliance budget. These expenses were approved in July 1997. The assessment rate and funding for research and promotion projects, and the road guard station maintenance portion of the compliance budget were to be recommended at a later Committee meeting.

The Committee subsequently met on November 6, 1997, and unanimously recommended 1997–98 expenditures of $245,000 and an assessment rate of $0.05 per 50-pound container or equivalent of onions. In comparison, last year's budgeted expenditures were $448,000. The assessment rate of $0.05 is $0.02 less than the rate currently in effect. The Committee voted to lower its assessment rate and use more of the reserve to cover its expenses. The assessment rate decrease is necessary to bring expected assessment income closer to the amount necessary to administer the program for the 1997–98 fiscal period. At the current rate, assessment income would exceed anticipated expenses by about $35,000, and the projected reserve of $220,000 on July 31, 1998, would exceed the level the Committee believes to be adequate to administer the program.

Major expenses recommended by the Committee for the 1997–98 fiscal period include $80,912 for personnel and administrative expenses, $45,000 for compliance, $33,088 for promotion, and $86,000 for onion breeding research. Budgeted expenses for these items in 1996–97 were $80,000, $120,000, $150,000, and $98,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Onion shipments for the year are estimated at 4 million 50-pound equivalents, which should provide $200,000 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 (currently $185,000) will be kept within the maximum permitted by the order (approximately two fiscal periods' expenses; § 959.43).

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 1997–98 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

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. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and 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 68 producers of South Texas onions in the production area and approximately 35 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. The majority of South Texas onion producers and handlers may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 1997–98 and subsequent fiscal periods from $0.07 to $0.05 per 50-pound container or equivalent. The Committee unanimously recommended 1997–98 expenditures of $245,000 and an assessment rate of $0.05 per 50-pound container or equivalent of onions. In comparison, last year's budgeted expenditures were $448,000. The assessment rate of $0.05 is $0.02 less than the rate currently in effect. At the rate of $0.07 per 50-pound container or equivalent and an estimated 1998 onion production of 4 million 50-pound equivalents, the projected reserve on July 31, 1998, would exceed the level the Committee believes to be adequate to administer the program. The Committee decided that an assessment rate of less than $0.05 would not generate the income necessary to administer the program with an adequate reserve.

Major expenses recommended by the Committee for the 1997–98 fiscal period include $80,912 for personnel and administrative expenses, $45,000 for compliance, $33,088 for promotion, and $86,000 for onion breeding research. Budgeted expenses for these items in 1996–97 were $80,000, $120,000, $150,000, and $98,000, respectively.

Onion shipments for the year are estimated at 4 million 50-pound equivalents, which should provide $200,000 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 (currently $185,000) will be kept within the maximum permitted by the order (approximately two fiscal periods' expenses; § 959.43).

Recent price information indicates that the grower price for the 1997–98 marketing season will range between $7.00 and $12.00 per 50-pound container or equivalent of onions. Therefore, the estimated assessment revenue for the 1997–98 fiscal period as a percentage of total grower revenue will range between .714 and .417 percent.

This action reduces the assessment obligation imposed on handlers. While this rule imposes some additional costs on handlers, the costs are minimal and 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. In addition, the Committee's meeting was widely publicized throughout the South Texas onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 6, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action will not impose any additional reporting or recordkeeping requirements on either small or large South Texas onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. After consideration of all relevant matter 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) This action reduces the current assessment rate for South Texas onions; (2) the 1997–98 fiscal period began on August 1, 1997, 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 other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 959.237 [Amended]

2. Section 959.237 is amended by removing the words ''August 1, 1996,'' and adding in their place the words ''August 1, 1997,'' and by removing ''$0.07'' and adding in its place ''$0.05.''

Dated: December 22, 1997.

Sharon Bomer Lauritsen,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–33907 Filed 12–29–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 545, 550, 563e, and 571

[No. 97–129]

RIN 1550–AB09

Fiduciary Powers; Community Reinvestment Act

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (''OTS'') is issuing a final rule revising its fiduciary powers regulation. The final rule updates, clarifies, and streamlines OTS regulations, incorporates significant interpretive guidance, and eliminates unnecessary regulatory burden. The final rule consolidates all regulations on the fiduciary powers of Federal savings associations into a single part. Additionally, this part has been revised to incorporate the OTS current policy statement on the fiduciary activities of State-chartered savings associations.

The OTS is also amending its Community Reinvestment Act (''CRA'') regulations. The change conforms the scope of the OTS's CRA regulations to the regulations of the other Federal banking agencies. It exempts certain savings associations that do not perform commercial or retail banking services by

granting credit to the public in the ordinary course of business.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Larry Clark, Senior Manager, Compliance and Trust Programs, Compliance Policy, (202) 906–5628; Timothy Leary, Counsel (Banking and Finance), (202) 906–7170, or Karen Osterloh, Assistant Chief Counsel, (202) 906–6639, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

I. Background

On July 23, 1997, the OTS published a notice of proposed rulemaking seeking comment on its regulations governing the fiduciary operations of Federal savings associations. 62 FR 39477. The proposal was the first comprehensive revision of the fiduciary powers regulations at 12 CFR part 550 since 1980.

The proposed rule was intended to update, streamline, and clarify these regulations. It also reflected the changes that Federal savings associations and their fiduciary operations have undergone since 1980, and incorporated significant interpretive opinions. Overall, the purpose of the proposed rule was to facilitate the continued development of fiduciary business consistent with safe and sound practices. Consistent with section 303 of the Community Development and Regulatory Improvement Act of 1994 (''CDRIA''), the proposed rule conformed OTS's fiduciary powers rules more closely to rules of the other agencies, specifically the rules issued by the Office of the Comptroller of the Currency at 12 CFR part 9, as revised at 61 FR 68543 (December 30, 1996).

The OTS also sought comment on exemptions from the OTS's regulations implementing the Community Reinvestment Act (''CRA''). Specifically, the OTS proposed to conform its CRA regulations to the other Federal banking agencies by exempting certain special purpose savings associations. Special purpose savings associations were exempted if they do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business, other than as incident to their specialized operations.

II. Comments Received

Four commenters responded to the proposal: Two Federal savings associations, one State regulatory agency, and one community reinvestment organization. Generally, the two Federal savings associations supported the proposal, but suggested specific changes. The State regulatory agency did not support or oppose the proposal, but also made suggestions. The community reinvestment organization opposed the proposed CRA exemption for special purpose savings associations.

III. Discussion

A. Fiduciary Powers

1. Structure of Revised Part 550

The proposed fiduciary powers rule was written in a traditional regulation format. The final fiduciary powers rule issued today uses the plain language drafting techniques promoted by the Vice President's National Performance Review Initiative and new guidance in the Federal Register Document Drafting Handbook (January 1997 edition). The primary goal of plain language drafting is to make regulations easier to understand. Plain language drafting emphasizes informative headings (often written as a question), non-technical language (including the use of ''you''), and sentences in the active voice.

Although commenters did not have an opportunity to comment on the plain language format prior to this final rule, the OTS believes that the benefits of the plain language format justify its use. Even though the OTS has substantially reorganized the rule, the substance of the proposed regulation did not change as a result of the format. The OTS welcomes comments on the format and suggestions on how to improve it.

2. Section-by-Section Discussion

A discussion of the comments follows. This discussion generally does not address provisions on which the OTS received no comments or only supporting comments. Unless specifically discussed below, the proposed rules are adopted with only plain language format changes.

Section 550.10 What regulations govern the fiduciary operations of savings associations?

Proposed § 550.1 stated that part 550 is issued pursuant to 12 U.S.C. 1464(n) (section 5(n) of the Home Owners' Loan Act (''HOLA'')). Proposed § 550.1 also stated that part 550 sets forth the standards that apply to the fiduciary activities of Federal savings associations. This section has been incorporated into final § 550.10(a), which states that a Federal savings association is required to conduct its fiduciary operations in accordance with 12 U.S.C. 1464(n) and the provisions of part 550.

The final rule at § 550.10(b) includes a new paragraph that was not included in the proposed rule. This provision incorporates, without substantive change, language from the existing policy statement regarding the fiduciary activities of State-chartered savings associations at 12 CFR 571.15. Final § 550.10(b) states that a State-chartered savings association must conduct its fiduciary operations in accordance with State law. The rule, however, also recognizes the OTS's interest in those operations. As such, the final rule requires State-chartered savings associations to exercise fiduciary powers in a safe and sound manner, and clarifies that these associations and their subsidiaries should follow the standards for the exercise of fiduciary powers set out in part 550.[1] The final rule also states that the OTS will monitor the fiduciary operations of State-chartered savings associations and their subsidiaries, and may restrict or prohibit activities that threaten the safety and soundness of the association.

Section 550.20 What are fiduciary powers?

The proposed rule at § 550.2 defined fiduciary powers as the authority the OTS permits a Federal savings association to exercise pursuant to 12 U.S.C. 1464(n). The definition also stated that the scope of a Federal savings association's fiduciary powers depends on the powers that the State grants to competing fiduciaries in the State in which the Federal savings association is located.

One commenter argued that the OTS should explicitly state that if an activity does not fall into the OTS's definition of fiduciary activity, but is an otherwise permissible activity for a Federal savings association or its operating subsidiaries, the association or subsidiary should be permitted to engage in that activity. The commenter maintained that it is irrelevant whether State competitors are allowed to engage in that activity and whether that activity is considered a fiduciary activity by the State.

The final rule adopts the language of the proposed rule. By the terms of the

[1] State-chartered savings associations are particularly advised to adhere to § 550.140, which contains the standards for the exercise of fiduciary powers. In exercising their fiduciary powers, State-chartered savings associations should also observe the procedures and policies required by Part 550 in the areas of fiduciary personnel and facilities, custody and control of assets, investing funds of a fiduciary account, deposit of funds awaiting investment or distribution, restrictions on self-dealing, and audit requirements.

statute, the scope of a Federal savings association's fiduciary powers is determined by the authority a particular State grants to competing fiduciaries in the State in which the Federal savings association is located. The reference in § 550.20 to State law is, thus, compelled by the statutory language.

We decline to adopt a blanket statement in this regulation about the applicability of particular State laws to activities that are otherwise permissible for a Federal savings association. Federal savings associations interested in conducting such activities should consult the statutory basis for that activity and the regulations that govern its exercise before engaging in the activity. The applicability of particular State law to the activity would depend on an analysis of each situation as it arises.

Section 550.30 What fiduciary capacities does this regulation cover?

Under the proposed rule, fiduciary capacity included specified fiduciary positions such as acting as a trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, custodian under a uniform gifts to minors act, any capacity in which the Federal savings association possesses investment discretion on behalf of another, or any other similar capacity that the OTS authorizes under 12 U.S.C. 1464(n).[2] The proposed definition also included acting as an investment adviser, if the Federal savings association receives a fee for its investment advice. In interpreting this provision, the OTS stated that it intended to follow a proposed OCC interpretive ruling on the meaning of investment advisor for a fee.[3] Under the OCC interpretation, the term investment advisor generally means that the institution provides advice or recommendations concerning the purchase or sale of specific securities, such as an institution engaged in portfolio advisory and management activities. The term generally excludes those activities in which the investment advice is merely incidental to other services.

One commenter argued that fiduciary capacity should not include a trustee under a deed of trust, a receiver or assignee under one's own security instrument in a default situation, a custodian under a uniform gift to minors act account, or a trustee under real estate or land trust. While the commenter generally supported the adoption of the OCC proposed interpretive ruling on investment advisors receiving a fee, it suggested that investment advisory and related activities that do not involve investment discretion should not be subject to part 550, even if performed for a fee.

The final rule at § 550.30 addresses the fiduciary capacities that are covered by part 550. The final rule continues to cite the specific fiduciary capacities in the proposed rule. Some of the specific capacities are enumerated under 12 U.S.C. 1464(n)(1). Others, such as custodian under a uniform gift to minors act, have long been cited under the OTS and OCC fiduciary powers regulations. The final rule also includes any capacity in which the association possesses investment discretion on behalf of another, and acting as an investment advisor for a fee.

The OTS has not adopted the commenter's proposal to exclude certain fiduciary capacities. Initially, we note that the applicability of part 550 to some of the specifically-listed fiduciary positions will depend on what the fiduciary in the relationship actually does. For example, ''trustee'' is a specifically-listed fiduciary capacity at § 550.30(a). The final rule at § 550.580(c), however, excepts a Federal savings association from part 550 if the association acts as the trustee of a fiduciary account that involves no active fiduciary duties and applicable law permits the association to act in that capacity. Similarly, an investment adviser that receives a fee for advice is a specifically-listed fiduciary capacity at § 550.30(j). The OTS, however, has indicated that it will follow the OCC's proposed interpretive ruling on investment advisers, which provides numerous examples of activities that do not constitute the provision of investment advice.[4] Finally, we note that the final rule generally excludes relationships'—other than those specifically listed'—where the Federal savings association does not have investment discretion.

As noted, one commenter argues that a Federal savings association that gives investment advice for a fee should not be deemed to be acting in a fiduciary capacity if it is not making the investment decision.

The OTS disagrees. When a customer pays a Federal savings association a fee in return for providing investment advice—whether or not that customer follows the advice—the customer has a reasonable expectation of receiving advice that is free of conflicts of interest. Such an approach is also consistent with other Federal statutes that provide enhanced protection to customers of certain investment advisers who receive a fee.[5] Consistent with the OCC's rules at part 9, the OTS believes that the distinction between paid and unpaid investment advice reflects the reasonable expectation of Federal savings association customers.

Even under this approach, the OTS maintains some flexibility in determining what is investment advice. As noted, the OCC has issued a proposed interpretive ruling on the meaning of this phrase, and the OTS intends to follow that interpretation. Such guidance, in combination with the exemption in final § 550.580(c), should suffice to ensure proper application of the concept of acting in a fiduciary capacity.

Finally, the preamble to the proposed rule noted that bank employees who engage in certain securities transactions for customers are subject to various recordkeeping and confirmation requirements under the rules of the other Federal banking agencies.[6] The proposal sought comment on whether the OTS should issue a separate proposed rulemaking adopting those rules for employees of Federal savings associations.

Two commenters noted that the other banking agencies are currently revising their rules. The commenters urged the

[2] The proposed rule sought comment on whether the final rule should rely on State law to determine the dividing line between fiduciary and non-fiduciary activities. One commenter opposed this alternative. The OTS believes that the definition of fiduciary capacity should foster consistent application of part 550 for all Federal savings associations. Accordingly, the OTS will not rely exclusively on State law in determining whether a particular activity amounts to acting in a fiduciary capacity. We note that the OCC also rejected a State law approach in its final rule on fiduciary activities of national banks.

[3] 62 FR 36746 (July 9, 1997).

[4] These include financial advice and counseling, including strategic planning of a financial nature, merger and acquisition advisory services, advisory and structuring services related to project finance transactions, and providing market economic information to customers in general; client-directed investment activities where the fee does not depend on the provision of investment advice; investment advice incidental to acting as a municipal securities dealer; real estate asset management; real estate consulting; advice concerning bridge loans; services for homeowners' associations; tax planning and structuring advice; and investment advice authorized by the OCC under 12 U.S.C. 24 (Seventh) as an incidental power necessary to carry on the business of banking.

[5] See, e.g., 29 U.S.C. 1002(21)(A) (fiduciaries of ERISA accounts); 15 U.S.C. 80b–2(a)(11) (Investment Advisers Act, which generally applies to any person who, for compensation, engages in the business of advising others. Although banks are exempt from the Investment Advisers Act, Federal savings associations are not, and investment advisers employed by Federal savings associations must therefore register with the SEC).

[6] 12 CFR part 12 (OCC); 12 CFR 208.8(k) (FRB); 12 CFR part 344 (FDIC).

OTS to wait and see what revisions are made before engaging in formal rulemaking. The OTS agrees and has deferred consideration of this issue.

Section 550.60 What other definitions apply to this part?

The proposed rule at § 550.2 defined applicable law as ''the law of a State or other jurisdiction governing a Federal savings association's fiduciary relationships, any applicable Federal law governing those relationships, the terms of the instrument governing a fiduciary relationship, or any court order pertaining to the relationship.'' One commenter urged the OTS to specify that State law does not apply to the fiduciary activities of Federal savings association except to the extent specifically required by section 5(n) of the HOLA.

The final rule does not adopt the commenter's suggestion. Both the OTS's Trust Activities Handbook and prior OTS precedent recognize that State law may apply to the fiduciary activities of a Federal savings association.[7] However, by defining applicable law to include ''the law of a State * * * governing a fiduciary relationship,'' the OTS does not intend to affect its precedent in the area of Federal preemption. The fiduciary operations of Federal savings associations are subject to a complex interplay between Federal and State law.

The OTS has noted that although State law may apply, in certain circumstances, to the fiduciary operations of a Federal savings association, Federal law grants the OTS the plenary authority to regulate all aspects of the operations of Federal savings associations, including fiduciary operations.[8] Consistent with this role, the OTS has promulgated these detailed regulations to govern the fiduciary operations of Federal savings associations. Any State law that conflicts with any of these regulations or section 5(n) of the HOLA is preempted.[9]

Moreover, even though State law applies in limited circumstances, the next question is: ''*Which* State's laws apply?'' A Federal savings association is subject only to the laws of the State (or States) in which it is located. The OTS has found that a Federal savings association is located, for fiduciary purposes, in each State in which it operates a fiduciary office.[10] The OTS has further found that an association is not located in a State in which it only markets its fiduciary services[11] or performs certain activities incidental to serving as a testamentary trustee or a trustee holding real estate.[12]

The definition of applicable law is not intended to set an order of priority among the various authorities. Rather, the intent of the definition is to identify the various authorities that may govern a Federal savings association's fiduciary activities. Preemption and conflicts of law issues in the fiduciary area are highly fact-specific and cannot be resolved by reference to a general blanket rule of priority. The OTS believes the better practice is to continue to handle specific questions about the applicability of particular State laws on a case-by-case basis. Accordingly, the final rule adopts the proposed definition of applicable law.

Section 550.130 What fiduciary powers may a Federal savings association exercise?

Proposed § 550.4(a) stated that a Federal savings association may exercise only those fiduciary powers stated in the OTS's approval of a fiduciary application. Moreover, unless otherwise provided in the OTS's approval, a Federal savings association may exercise fiduciary powers only in those offices listed in the application.

One commenter argued that the office limitation is restrictive, and that there is no valid legal or policy reason for requiring a Federal savings association to file a new application when it opens a new branch or office. The commenter argued that appropriate information about such expanded operations could be provided through a notice or approval process.

The final rule adopts the proposed rule without substantive change. Like the proposed rule, § 550.130 states that the location restriction only applies ''unless otherwise provided in the approval.'' This language gives the OTS the legal authority to specify at the time that it approves a fiduciary powers application that the applicant may expand the offices out of which it exercises approved fiduciary powers by simply filing a notice with the OTS. The willingness of the OTS to grant an initial approval that authorizes subsequent expansion through such a process will depend on a number of factors, including an institution's financial and managerial resources, history of regulatory compliance, level of fiduciary expertise, and so forth.

Thus, a decision whether the OTS will authorize an expanded network under a notice process cannot be made until the initial fiduciary powers application is submitted and reviewed.[13] Since the proposed rule would permit the addition of new offices using notice process where appropriate, the commenter's revision has not been incorporated in the final rule. The proposed language is sufficient to alleviate the commenter's concern.

Section 550.140 Must a Federal savings association adopt and follow written policies and procedures in exercising fiduciary powers?

Proposed § 550.6 set out the general standards that a Federal association must follow in exercising its fiduciary powers. The proposed rule specifically provided that a Federal savings association must exercise its fiduciary powers prudently and in compliance with applicable law.

The proposed rule further provided that a Federal savings association must use standards in exercising its fiduciary powers that are consistent with safety and soundness, promote sound fiduciary administration, and enable the Federal savings association to adequately monitor the condition of its fiduciary operations. Unlike the OCC's fiduciary powers regulation, the proposed rule did not require a Federal savings association to maintain written policies and procedures governing the exercise of fiduciary powers. Compare 12 CFR 9.5.

Two commenters addressed proposed § 550.6. One, a Federal savings association, supported the proposal. The other, a State regulatory agency, argued that the OTS should require Federal savings associations to develop, maintain, and follow procedures, especially in the areas of self-dealing and conflicts of interest. This commenter argued that written policies and procedures are necessary to properly manage risks in these areas.

Upon further consideration, the OTS has determined that requiring written policies and procedures in this area is appropriate. Since 1989, the OTS Trust Activities Handbook has ''strongly encouraged'' associations to adopt written policies and procedures covering all major aspects of their

[7] OTS Trust Activities Handbook, § 130 at 75 (1992); OTS Op. Chief Counsel (March 28, 1996) at 9. The example noted in both of these authorities is State probate law, which prescribes the standards of conduct of an institution acting as an executor.

[8] 12 U.S.C.A. 1464(a) (West Supp. 1995); OTS Op. Chief Counsel (March 28, 1996) at 8.

[9] OTS Op. Chief Counsel (March 28, 1996) at 8; OTS Trust Activities Handbook, § 130 at 75 (1992).

[10] 62 FR 39479; OTS Op. Chief Counsel (March 28, 1996).

[11] OTS Op. Chief Counsel (June 21, 1996).

[12] OTS Op. Chief Counsel (August 8, 1996).

[13] *See* OTS Op. Chief Counsel (December 24, 1992).

fiduciary business, to communicate such policies to all interested personnel, to monitor compliance with the policies, and to periodically review and update the policies to ensure their current application. Comprehensive, well-developed policies and procedures on fiduciary activities, if followed, monitored, and enforced, are an effective method of preventing exposure to liability, operating loss and the loss of public confidence in the association. Such policies and procedures promote high-quality fiduciary administration, facilitate compliance with applicable laws and regulations, and increase operating efficiencies.

Accordingly, consistent with the OCC's 12 CFR 9.5, the final rule adopts the requirement for written policies and procedures. Specifically, the OTS final rule requires Federal savings associations to adopt and follow written policies and procedures adequate to maintain its fiduciary activities in compliance with applicable law. The final rule also provides examples of areas that the policies and procedures should address, where appropriate. The list includes brokerage placement practices, the prevention of misuse of material inside information, the prevention of self-dealing and conflicts of interest, the selection and retention of legal counsel, and the investment of funds (including funds awaiting investment or distribution).[14] The OTS does not intend the list to be exhaustive.

Section 550.260 How may a Federal savings association invest funds of a fiduciary account?

Proposed § 550.12(a) provided that, where consistent with applicable law, a Federal savings association may invest fiduciary assets in certain described collective investment funds. One commenter expressed concerns about the scope of this provision, specifically whether it authorized fiduciary assets to be invested in collective investment funds established under other authority, such as the OCC's collective investment funds regulation, 12 CFR 9.18.

Upon review, the OTS has determined to significantly revise this section. A collective investment fund can be exempt from taxation if it is administered in accordance with applicable provisions of the Internal Revenue Code. Section 584 of the Internal Revenue Code exempts certain funds from taxation if they are administered in accordance with OCC regulations. This IRC section applies to funds established by savings associations as well as banks. As a result, the OTS fiduciary powers regulation has always incorporated the requirements of 12 CFR 9.18 by reference. The OTS proposed rule included some of the OCC requirements applicable to collective investment funds and incorporated others by reference. By revising the final rule to incorporate all of the requirements by reference, the OTS believes it will reduce the confusion about the regulation's scope and applicability.

New § 550.260(b) authorizes a Federal savings association to invest fiduciary funds in a collective investment fund and to establish and administer such a fund. All such activities must be done in accordance with the OCC's detailed regulations governing this area. As a Federal savings association must already comply with those requirements in order to maintain the tax-exempt status of its collective investment fund, this change will help to reduce regulatory duplication and overlap, consistent with the objective of section 303 of CDRIA.

The final rule eliminates the language in § 550.12(a), which caused the commenter's concern that the proposed rule would have prohibited a savings association from investing in an otherwise permissible collective investment fund maintained by an affiliated or unaffiliated State bank or trust company. Under § 550.260(a), which replaces § 550.11, a savings association is authorized to invest funds of a fiduciary account in a manner consistent with applicable law.[15]

Sections 550.290–550.320 Funds Awaiting Investment or Distribution

Proposed § 550.10(b)(1) and (c) stated that a Federal savings association with investment discretion or discretion over distributions may deposit funds awaiting investment or distribution in the commercial, savings, or other department of the association, or with an affiliated insured depository institution, unless the deposit is prohibited by applicable law. To the extent that the funds are not insured by the FDIC, the association is required to set aside acceptable collateral as security. See proposed § 550.10(b)(2). The proposed provisions are adopted without substantive change at §§ 550.290 through 550.320.

Under the proposed rule, acceptable collateral includes surety bonds, to the extent that such bonds provide adequate security and are not prohibited by applicable law. See proposed § 550.10(b)(2)(iv). One commenter urged the OTS to adopt a national standard allowing Federal savings associations to use security bonds, without regard to State prohibitions.

Section 550.320(d) of the final rule continues to provide that surety bonds may be used to collateralize self-deposits unless prohibited by applicable law. This approach grants Federal savings associations the ability to collateralize self-deposits with surety bonds, while preserving for each State the ability to prohibit this practice for all fiduciaries operating in the State.

Sections 550.440–550.480 Audit Requirements

Proposed § 550.9 prescribed the audit requirements for fiduciary activities. The proposed rule required Federal savings associations to conduct an annual audit of significant fiduciary activities. Alternatively, the proposed rule permitted a continuous audit, which allows a Federal savings association to arrange for a discrete audit of each significant fiduciary activity at an interval commensurate with the nature and risk of the activity.[16] Under the proposed rule, all audits are conducted under the direction of the fiduciary audit committee. This committee may consist of a committee of the association's

[14] We note that two of the listed areas are derived from requirements in current part 550. They are the use of material inside information in connection with any decision or recommendation to purchase or sell any security (current § 550.5(c)) and the selection and retention of available legal counsel (current § 550.5(d)).

[15] Moreover, § 9.18(a), which is intended to clarify that traditional common law prohibitions against commingling fiduciary assets do not affect a national bank's ability to invest in a collective investment fund maintained by the bank or an affiliated bank, addresses investments in collective investment funds maintained by an affiliated State chartered trust company. This provision permits a national bank to invest assets that it holds as fiduciary in a collective investment fund maintained by one or more affiliated ''banks'' exclusively for the collective investment and reinvestment of money contributed to the fund by the bank, or by one or more affiliated banks. Section 581 of the Internal Revenue Code, which the OCC regulation implements, defines ''bank'' to include ''a trust company incorporated and doing business under the laws of * * * any State, a substantial part of the business of which consists of * * * exercising fiduciary powers similar to those permitted to national banks under the authority of the [OCC], and which is subject by law to supervision and examination by State * * * authority having supervision over banking institutions.'' Under this definition, we believe that ''bank'' as used in the OCC regulation includes an affiliated State chartered trust company.

[16] While recognizing that the frequency of discrete audits for Federal savings associations that use a continuous audit system will vary depending on the nature and risk of the activity being audited, the OTS does not intend to allow an association using a continuous audit system to avoid discrete audits indefinitely. Although the final rule does not specify how often such discrete audits must be conducted, they must occur at reasonable time frames.

directors or an audit committee of an affiliate of the association.

One commenter supported the proposal to allow an audit committee of a savings and loan holding company to audit the fiduciary activities of its subsidiary Federal savings association. The commenter argued that the same option should be available to bank holding companies that own Federal savings associations.

Although the preamble to the proposed rule addressed the audit committee of a savings and loan holding company, the language of the proposed rule permitted an audit committee of an affiliate to direct the audit. Affiliate, as defined in the rule, could include a savings and loan holding company and a bank holding company, provided that specified ownership, control or other criteria are met.[17] Accordingly, the proposed rule would permit these arrangements. The final rule at § 550.470 is unchanged on this point.

In the preamble to the proposed rule, the OTS invited commenters to address the relationship between the audit requirement and the OTS's fiduciary examination process. In particular, the OTS sought comment on the extent to which examiners should rely on an association's internal or external fiduciary audits.

One commenter, a Federal savings bank, supported an audit report-based fiduciary examination policy. The commenter suggested that the OTS should first review an association's internal or external audit reports, and commence an on-site fiduciary examination only when those reports and any additional information indicated a basis for further examination. The commenter asserted that this approach would provide administrative savings and would not compromise safety and soundness or consumer protection. The OTS believes that the relationship between the audit and examination processes are properly addressed in OTS instructions to examiners and in the Handbook, rather than the rule. The OTS will consider these comments if it revises the Handbook or its examination instructions.

Sections 550.580–550.620 Activities Exempt From This Part

Proposed § 550.3 identified certain fiduciary activities that are not covered by part 550. This section incorporated current § 545.102, which permits a Federal savings association to act as a trustee or custodian of an Individual Retirement Account or a Keogh account, including self-directed accounts. A Federal savings association may also act as a trustee with no active fiduciary duties so long as authorized by applicable law.

Under proposed § 550.3(b), however, a Federal savings association may invest the funds of the accounts in limited investments. The proposed rule also set forth existing requirements governing the administration of accounts and compensation. See proposed § 550.3(c) and (d). These provisions are adopted in the final rule at subpart E, with one clarification. Final § 550.600 has been revised to clarify that the limitations on investments apply only to Federal savings associations acting in the fiduciary capacities described under § 550.580.

The proposed rule at § 550.3(e) required Federal savings associations to make certain disclosures where fiduciary accounts are not limited to FDIC-insured deposits. One commenter urged the OTS to eliminate this requirement as duplicative and unnecessary. The commenter noted that similar disclosures are required under the Interagency Statement on Retail Sales of Nondeposit Investment Products.

The OTS disagrees. The Interagency Statement ''generally do[es] not apply to the sale of nondeposit investment products to non-retail customers, such as sales to fiduciary accounts administered by an institution.'' [18] To ensure that adequate disclosures are made to non-retail customers holding fiduciary accounts with Federal savings associations, the final rule adopts the proposed disclosure requirement. Final § 550.610 has been slightly revised to clarify that the disclosure requirement only applies to Federal savings associations acting in the fiduciary capacities described under § 550.580.

B. CRA Exemption

The OTS also proposed to revise its regulations prescribing the scope of the CRA regulations to make the CRA's application to savings associations consistent with its application to banks. Under the current rule at § 563e.11(c), the CRA regulations apply to all savings associations. By contrast, the CRA regulations of the other banking agencies exempt certain special purpose institutions, including fiduciaries, that do not perform commercial or retail banking services by extending credit to the public in the ordinary course of business, other than incident to their specialized operations.

This regulatory exemption reflects the banking agencies' long-standing policy in this area. The OTS's scope provisions differed from the other banking agencies' scope provisions because, at the time that the current rule at § 563e.11(c) was promulgated, the OTS did not regulate any savings associations that could be considered special purpose institutions. This is no longer the case. Thus, the proposed amendment to the CRA regulations was intended to recognize the existence of special purpose savings associations and to provide the same regulatory treatment for such institutions as would be afforded them if they were regulated by one of the other banking agencies.

One commenter, a community reinvestment organization, opposed any exemption to the CRA regulations. Instead, the commenter argued that the CRA should be expanded to include non-bank entities that provide bank-like services. The commenter argued that the OTS should refrain from adopting the exemption and that all the other agencies should eliminate it.

By contrast, a Federal savings association argued that the proposed CRA exemption does not go far enough. It notes that the OCC recently approved a bank charter for a company that would provide bill payment services, checking, or other deposit accounts. The OCC approved the institution's request for designation as a wholesale or limited purpose bank.[19] The commenter argued that all such companies should be added to the list of examples in the proposed rule, even if the checking or other deposit accounts are linked to overdraft lines of credit or similar products.

The OTS has adopted the special purpose savings association exemption without change. The OTS believes that the other Federal banking agencies' exemption for similar institutions argues strongly for a parallel thrift exemption. Some thrifts now meet the definition of a special purpose institution. The OTS has, by interpretation, exempted these institutions from coverage under the CRA regulations in a manner identical to the way in which they would be treated if they operated with a bank charter and were regulated by one of the bank regulators. The amendment to the CRA regulations merely formalizes the OTS's interpretation of the CRA regulations' application to such charters. If any special purpose savings association takes deposits or extends credit to the public in the ordinary

[17] See 12 U.S.C.A. 221a(b)(4) (West 1989).

[18] Interagency Statement on Retail Sales of Nondeposit Investment Products at 3.

[19] OCC Conditional Approval # 253 (August 20, 1997), 1997 OCC Ltr. LEXIS 98.

course of business other than as incident to its specialized operations, so that it no longer falls within the regulatory definition, then it immediately becomes subject to CRA regulation and examination by the OTS. The OTS will monitor such savings associations' activities through its safety and soundness, compliance, and trust examinations.

The OTS believes that any expansion of coverage of the CRA to include non-bank entities, as one of the commenters suggested, is a legislative issue. The OTS is not today expressing a view on whether such expansion would be appropriate or, if so, how it should be structured or implemented. The possibility that the CRA may be applied more broadly in the future does not convince the OTS that it should treat thrifts differently from banks in the interim.

We also do not believe that the exemption should be unilaterally extended to entities that only provide bill payment services and checking or other deposit accounts, as one commenter suggested. We note that the OCC did not exempt such institutions from the CRA regulations. Rather, the OCC granted a request for a limited purpose designation, which means that a separate provision of the CRA regulations applies.[20] A limited purpose designation subjects the institution to the Community Development Test, which is specially tailored to measure the performance of wholesale or limited purpose institutions. A limited purpose designation, however, is not an exemption from the CRA regulations. The OCC's approval of such a limited purpose designation does not affect whether the same institution is subject to the banking agencies' current, and the OTS's new, exemption for special purpose institutions.

IV. Derivation Chart for Revised Part 550

The following chart gives of an overview of the changes made to part 550.

Revised provision	Former provision	Comments
§ 550.10(a)		Added.
§ 550.10(b)	§ 571.15	Modified and added.
§ 550.20	§ 550.1(k)	Modified.
§ 550.30	§ 550.1(c) and (h)	Significantly modified.
§ 550.40	§ 550.1(f)	Modified.
§ 550.50	§ 550.1(a)	Modified.
§ 550.60	§§ 550.1(g) and (j)	Significantly modified.
§§ 550.70–120	§§ 550.2(a)–(c)	Modified.
§ 550.130	§ 550.2(d)	Modified.
§ 550.140	§ 550.5(c) and (d)	Modified and new provisions added.
§§ 550.150–190	§§ 550.5(a)(1), (b) and (e)	Significantly modified.
§§ 550.200–220	§ 550.5(a)(2)	Significantly modified.
§§ 550.230–250	§ 550.11	Modified.
§ 550.260	§§ 550.9 and 550.13	Significantly modified.
§§ 550.290–320	§ 550.8	Significantly modified.
§§ 550.330–370	§ 550.10	Modified.
§§ 550.380–400	§ 550.12	Modified.
§§ 550.410–430	§§ 550.5(a)(2) and 550.6(a)	Significantly modified.
§§ 550.440–480	§ 550.7	Significantly modified.
§§ 550.490–510	§ 550.4	Significantly modified.
§ 550.520	§ 550.15	Modified.
§§ 550.530–550	§ 550.14	Modified.
§§ 550.560–570	§ 550.16	Modified.
§§ 550.580–620	§ 545.102	Modified and added.

The following provisions from the former part 550 have been removed in the final rule: § 550.1(b); § 550.1(d); § 550.1(e); § 550.1(h); § 550.1(i); § 550.3; § 550.5(d); and § 550.6(b).

V. Effective Date

Section 553(d) of the Administrative Procedure Act (''APA'') requires an agency to publish a substantive rule at least 30 days before its effective date. Section 553(d)(1) of the APA, however, exempts substantive rules that relieve a restriction from the 30-day delayed effective date requirement.

The final rule relieves regulatory restrictions. For example, the final rule eliminates certain requirements of the old regulations, such as former § 550.3 (Consolidation or merger of two or more Federal savings associations), former § 550.5(d) (Retention of legal counsel), and former § 550.6(b) (Record of pending litigation). Moreover, the final rule clarifies some existing responsibilities. This final rule is therefore exempt from the 30-day delayed effective date requirement.

VI. Executive Order 12866

The Director of OTS has determined that this final rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

VII. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule 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. OTS has determined that the final rule will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Act of 1995.

[20] 12 CFR 25.21(a)(2) and 25.25. The parallel OTS citations are 12 CFR 563e.21(a)(2) and 563e.25.

VIII. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule liberalizes requirements and reduces burdens for Federal savings associations that exercise fiduciary powers, regardless of size. Accordingly, a regulatory flexibility analysis is not required.

IX. Reporting and Recordkeeping Requirements

The collection of information requirements contained in this final rule have been submitted to and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under OMB control number 1550–0037. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550–0037), Washington, D.C. 20503, with copies to the Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

The collection of information requirements in this final rule are found in 12 CFR 550.70–550.120, 550.260, 550.410–550.430, 550.440–550.480, and 550.530–550.550. The OTS requires this information for the proper supervision of Federal savings associations' fiduciary activities. The likely respondents/recordkeepers are Federal savings associations.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in this final rule is displayed at 12 CFR 506.1(b).

List of Subjects

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 550

Accounting, Reporting and recordkeeping requirements, Savings associations, Trusts and trustees.

12 CFR Part 563e

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 571

Accounting, Conflict of interests, Investments, Reporting and Recordkeeping requirements, Savings associations.

Authority and Issuance

Accordingly, the Office of Thrift Supervision amends Title 12, Chapter V, of the Code of Federal Regulations as set forth below:

PART 545—OPERATIONS

1. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

§ 545.102 [Removed]

2. Section 545.102 is removed.

3. Part 550 is revised to read as follows:

PART 550—FIDUCIARY POWERS OF SAVINGS ASSOCIATIONS

Sec.
550.10 What regulations govern the fiduciary operations of savings associations?
550.20 What are fiduciary powers?
550.30 What fiduciary capacities does this part cover?
550.40 When do I have investment discretion?
550.50 What is a fiduciary account?
550.60 What other definitions apply to this part?

Subpart A—Obtaining Fiduciary Powers

550.70 Must I obtain OTS approval before exercising fiduciary powers?
550.80 How do I obtain OTS approval?
550.90 What information must I include in my application?
550.100 What factors may the OTS consider in its review of my application?
550.110 Who will act on my application?
550.120 What action will the OTS take on my application?

Subpart B—Exercising Fiduciary Powers

550.130 What fiduciary powers may I exercise?
550.140 Must I adopt and follow written policies and procedures in exercising fiduciary powers?

Fiduciary Personnel and Facilities

550.150 Who is responsible for the exercise of fiduciary powers?
550.160 What personnel and facilities may I use to perform fiduciary services?
550.170 May my other departments or affiliates use fiduciary personnel and facilities to perform other services?
550.180 May I perform fiduciary services for, or purchase fiduciary services from, another association or entity?
550.190 Must fiduciary officers and employees be bonded?

Review of a Fiduciary Account

550.200 Must I review a prospective account before I accept it?
550.210 Must I conduct another review of an account after I accept it?
550.220 Are any other account reviews required?

Custody and Control of Assets

550.230 Who must maintain custody or control of assets in a fiduciary account?
550.240 May I hold investments of a fiduciary account off-premises?
550.250 Must I keep fiduciary assets separate from other assets?

Investing Funds of a Fiduciary Account

550.260 How may I invest funds of a fiduciary account?

Funds Awaiting Investment or Distribution

550.290 What must I do with fiduciary funds awaiting investment or distribution?
550.300 Where may I deposit fiduciary funds awaiting investment or distribution?
550.310 What if the FDIC does not insure the deposits?
550.320 What is acceptable collateral for uninsured deposits?

Restrictions on Self Dealing

550.330 Are there investments in which I may not invest funds of a fiduciary account?
550.340 May I exercise rights to purchase additional stock or fractional shares of my stock or obligations or the stock or obligations of my affiliates?
550.350 May I lend, sell, or transfer assets of a fiduciary account if I have an interest in the transaction?
550.360 May I make a loan to a fiduciary account that is secured by an interest in the assets in the account?
550.370 May I sell assets or lend money between fiduciary accounts?

Compensation, Gifts, and Bequests

550.380 May I earn compensation for acting in a fiduciary capacity?
550.390 May my officer or employee retain compensation for acting as a co-fiduciary?
550.400 May my fiduciary officer or employee accept a gift or bequest?

Recordkeeping Requirements

550.410 What records must I keep?
550.420 How long must I keep these records?
550.430 Must I keep fiduciary records separate and distinct from other records?

Audit Requirements

550.440 When do I have to audit my fiduciary activities?
550.450 What standards govern the conduct of the audit?
550.460 Who may conduct an audit?
550.470 Who directs the conduct of the audit?
550.480 How do I report the results of the audit?

Subpart C—Depositing Securities With State Authorities

550.490 When must I deposit securities with State authorities?
550.500 How much must I deposit if I administer fiduciary assets in more than one State?
550.510 What must I do if State authorities refuse my deposit?

Subpart D—Terminating Fiduciary Activities

Receivership or Liquidation

550.520 What happens if I am placed in receivership or voluntary liquidation?

Surrender of Fiduciary Powers

550.530 How do I surrender fiduciary powers?
550.540 When will the OTS terminate my fiduciary powers?
550.550 May I recover my deposit from State authorities?

Revocation of Fiduciary Powers

550.560 When may the OTS revoke my fiduciary powers?
550.570 What procedures govern the revocation?

Subpart E—Activities Exempt From This Part

550.580 When may I act in a fiduciary capacity without obtaining OTS approval?
550.590 What standards must I observe when acting in exempt fiduciary capacities?
550.600 How may I invest funds when acting in exempt fiduciary capacities?
550.610 What disclosures must I make when acting in exempt fiduciary capacities?
550.620 May I receive compensation for acting in exempt fiduciary capacities?

Authority: 12 U.S.C. 1462a, 1463, 1464.

§ 550.10 What regulations govern the fiduciary operations of savings associations?

(a) *Federal savings associations.* A Federal savings association (''you'') must conduct its fiduciary operations in accordance with 12 U.S.C. 1464(n) and this part.

(b) *State-chartered savings associations.* (1) A State-chartered savings association must conduct its fiduciary operations in accordance with applicable State law, and must exercise its fiduciary powers in a safe and sound manner. To ensure safe and sound operations, State-chartered savings associations and their subsidiaries should follow the standards for the exercise of fiduciary powers in this part.

(2) The OTS will monitor the fiduciary operations of State-chartered savings associations and their subsidiaries to ensure that those operations are conducted in a safe and sound manner. The OTS may object to practices that deviate materially from the practices described in this part, and may restrict or prohibit activities that threaten the safety and soundness of a State-chartered savings association.

§ 550.20 What are fiduciary powers?

Fiduciary powers are the authority that the OTS permits you to exercise under 12 U.S.C. 1464(n). The scope of permissible fiduciary powers depends on the powers that the State in which you are located grants to competing fiduciaries in that State.

§ 550.30 What fiduciary capacities does this part cover?

You are subject to this part if you act in a fiduciary capacity, except as described in subpart E of this part. You act in a fiduciary capacity when you act in any of the following capacities:

(a) Trustee.
(b) Executor.
(c) Administrator.
(d) Registrar of stocks and bonds.
(e) Transfer agent.
(f) Assignee.
(g) Receiver.
(h) Guardian or conservator of the estate of a minor, an incompetent person, an absent person, or a person over whose estate a court has taken jurisdiction, other than under bankruptcy or insolvency laws.
(i) A fiduciary in a relationship established under a State law that is substantially similar to the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act as published by the American Law Institute.
(j) Investment adviser, if you receive a fee for your investment advice.
(k) Any capacity in which you have investment discretion on behalf of another.
(l) Any other similar capacity that the OTS may authorize under 12 U.S.C. 1464(n).

§ 550.40 When do I have investment discretion?

(a) *General.* You have investment discretion when you have, with respect to a fiduciary account, the sole or shared authority to determine what securities or other assets to purchase or sell on behalf of that account. It does not matter whether you have exercised this authority.

(b) *Delegations.* You retain investment discretion if you delegate investment discretion to another. You also have investment discretion if you receive delegated authority to exercise investment discretion from another.

§ 550.50 What is a fiduciary account?

A fiduciary account is an account that you administer acting in a fiduciary capacity.

§ 550.60 What other definitions apply to this part?

Affiliate has the same meaning as in 12 U.S.C. 221a(b). For purposes of this part, substitute the term ''Federal savings association'' for the term ''member bank'' whenever it appears in 12 U.S.C. 221a(b).

Applicable law means the law of a State or other jurisdiction governing your fiduciary relationships, any Federal law governing those relationships, the terms of the instrument governing a fiduciary relationship, and any court order pertaining to the relationship.

Fiduciary officers and employees means the officers and employees of a Federal savings association to whom the board of directors or its designee has assigned functions involving the exercise of the association's fiduciary powers.

Subpart A—Obtaining Fiduciary Powers

§ 550.70 Must I obtain OTS approval before exercising fiduciary powers?

Unless you are covered by subpart E of this part, you must obtain prior approval from the OTS before exercising fiduciary powers.

§ 550.80 How do I obtain OTS approval?

You must file an application under § 516.1(c) of this chapter.

§ 550.90 What information must I include in my application?

You must describe the fiduciary powers that you or your affiliate will exercise. You must also include information necessary to enable the OTS to make the determinations described in § 550.100.

§ 550.100 What factors may the OTS consider in its review of my application?

The OTS may consider the following factors when reviewing your application:

(a) Your financial condition.
(b) Your capital and whether that capital is sufficient under the circumstances.
(c) Your overall performance.
(d) The fiduciary powers you propose to exercise.
(e) Your proposed supervision of those powers.
(f) The availability of legal counsel.
(g) The needs of the community to be served.
(h) Any other facts or circumstances that the OTS considers proper.

§ 550.110 Who will act on my application?

The Director of OTS may act on any application. The Regional Director may

act on an application if it does not raise any significant issues of law or policy on which the OTS has not taken a formal position.

§ 550.120 What action will the OTS take on my application?

The OTS may approve or deny your application. If your application is approved, the OTS may impose conditions to ensure that the requirements of this part are met.

Subpart B—Exercising Fiduciary Powers

§ 550.130 What fiduciary powers may I exercise?

You may exercise only those fiduciary powers specified in the OTS approval under § 550.120. Unless otherwise provided in the approval, you may exercise fiduciary powers only from those offices listed in the application.

§ 550.140 Must I adopt and follow written policies and procedures in exercising fiduciary powers?

You must adopt and follow written policies and procedures adequate to maintain your fiduciary activities in compliance with applicable law. Among other relevant matters, the policies and procedures should address, where appropriate, the following areas:

(a) Your brokerage placement practices.

(b) Your methods for ensuring that your fiduciary officers and employees do not use material inside information in connection with any decision or recommendation to purchase or sell any security.

(c) Your methods for preventing self-dealing and conflicts of interest.

(d) Your selection and retention of legal counsel who is ready and available to advise you and your fiduciary officers and employees on fiduciary matters.

(e) Your investment of funds held as fiduciary, including short-term investments and the treatment of fiduciary funds awaiting investment or distribution.

Fiduciary Personnel and Facilities

§ 550.150 Who is responsible for the exercise of fiduciary powers?

The exercise of your fiduciary powers must be managed by or under the direction of your board of directors. In discharging its responsibilities, the board may assign any function related to the exercise of fiduciary powers to any director, officer, employee, or committee of directors, officers, or employees.

§ 550.160 What personnel and facilities may I use to perform fiduciary services?

You may use your qualified personnel and facilities or an affiliate's qualified personnel and facilities to perform services related to the exercise of fiduciary powers.

§ 550.170 May my other departments or affiliates use fiduciary personnel and facilities to perform other services?

Your other departments or affiliates may use fiduciary officers, employees, and facilities to perform services unrelated to the exercise of fiduciary powers, to the extent not prohibited by applicable law.

§ 550.180 May I perform fiduciary services for, or purchase fiduciary services from, another association or entity?

You may perform services related to the exercise of fiduciary powers for another association or other entity under a written agreement. You may also purchase services related to the exercise of fiduciary powers from another association or other entity under a written agreement.

§ 550.190 Must fiduciary officers and employees be bonded?

You must obtain an adequate bond for all fiduciary officers and employees.

Review of a Fiduciary Account

§ 550.200 Must I review a prospective account before I accept it?

Before accepting a prospective fiduciary account, you must review it to determine whether you can properly administer the account.

§ 550.210 Must I conduct another review of an account after I accept it?

After you accept a fiduciary account for which you have investment discretion, you must conduct a prompt review of all assets of the account to evaluate whether they are appropriate, individually and collectively, for the account.

§ 550.220 Are any other account reviews required?

At least once every calendar year, you must conduct a review of all assets of each fiduciary account for which you have investment discretion. In this review, you must evaluate whether the assets are appropriate, individually and collectively, for the account.

Custody and Control of Assets

§ 550.230 Who must maintain custody or control of assets in a fiduciary account?

You must place assets of fiduciary accounts in the joint custody or control of not fewer than two fiduciary officers or employees designated for that purpose by the board of directors.

§ 550.240 May I hold investments of a fiduciary account off-premises?

You may hold the investments of a fiduciary account off-premises, if this practice is consistent with applicable law, and you maintain adequate safeguards and controls.

§ 550.250 Must I keep fiduciary assets separate from other assets?

You must keep the assets of fiduciary accounts separate from your other assets. You must also keep the assets of each fiduciary account separate from all other accounts, or you must identify the investments as the property of a particular account, except as provided in §§ 550.260.

Investing Funds of a Fiduciary Account

§ 550.260 How may I invest funds of a fiduciary account?

(a) *General.* You must invest funds of a fiduciary account in a manner consistent with applicable law.

(b) *Collective investment funds.* (1) You may invest funds of a fiduciary account in a collective investment fund, including a collective investment fund that you have established. In establishing and administering such funds, you must comply with 12 CFR 9.18.

(2) If you must file a document with the Comptroller of the Currency under 12 CFR 9.18, you must also file that document with OTS under § 516.1(c) of this chapter. The OTS may review such documents for compliance with this part and other laws and regulations.

(3) ''Bank'' and ''national bank'' as used in 12 CFR 9.18 shall be deemed to include a Federal savings association.

Funds Awaiting Investment or Distribution

§ 550.290 What must I do with fiduciary funds awaiting investment or distribution?

If you have investment discretion or discretion over distributions for a fiduciary account which contains funds awaiting investment or distribution, you must ensure that those funds do not remain uninvested and undistributed any longer than is reasonable for the proper management of the account and consistent with applicable law. You also must obtain a rate of return for those funds that is consistent with applicable law.

§ 550.300 Where may I deposit fiduciary funds awaiting investment or distribution?

(a) *Self deposits.* You may deposit funds of a fiduciary account that are awaiting investment or distribution in

your other departments, unless prohibited by applicable law.

(b) *Affiliate deposits.* You may also deposit funds of a fiduciary account that are awaiting investment or distribution with an affiliated insured depository institution, unless prohibited by applicable law.

§ 550.310 What if the FDIC does not insure the deposits?

If the FDIC does not insure the entire amount of a self deposit or an affiliate deposit, you must set aside collateral as security. The market value of the collateral must at all times equal or exceed the amount of the uninsured fiduciary funds. You must place the collateral under the control of appropriate fiduciary officers and employees.

§ 550.320 What is acceptable collateral for uninsured deposits?

Any of the following is acceptable collateral for self deposits or affiliate deposits under § 550.310:

(a) Direct obligations of the United States, or other obligations fully guaranteed by the United States as to principal and interest.

(b) Readily marketable securities of the classes in which State-chartered corporate fiduciaries are permitted to invest fiduciary funds under applicable State law.

(c) Other readily marketable securities as the OTS may determine.

(d) Surety bonds, to the extent they provide adequate security, unless prohibited by applicable law.

(e) Any other assets that qualify under applicable State law as appropriate security for deposits of fiduciary funds.

Restrictions on Self Dealing

§ 550.330 Are there investments in which I may not invest funds of a fiduciary account?

You may not invest funds of a fiduciary account for which you have investment discretion in the following assets, unless authorized by applicable law:

(a) The stock or obligations of, or assets acquired from, you or any of your directors, officers, or employees.

(b) The stock or obligations of, or assets acquired from, your affiliates or any of their directors, officers, or employees.

(c) The stock or obligations of, or assets acquired from, other individuals or organizations if you have an interest in the individual or organization that might affect the exercise of your best judgment.

§ 550.340 May I exercise rights to purchase additional stock or fractional shares of my stock or obligations or the stock or obligations of my affiliates?

If the retention of investments in your stock or obligations or the stock or obligations of an affiliate in fiduciary accounts is consistent with applicable law, you may do either of the following:

(a) Exercise rights to purchase additional stock (or securities convertible into additional stock) when these rights are offered *pro rata* to stockholders.

(b) Purchase fractional shares to complement fractional shares acquired through the exercise of rights or through the receipt of a stock dividend resulting in fractional share holdings.

§ 550.350 May I lend, sell, or transfer assets of a fiduciary account if I have an interest in the transaction?

(a) *General restriction.* Except as provided in paragraph (b) of this section, you may not lend, sell, or otherwise transfer assets of a fiduciary account for which you have investment discretion to yourself or any of your directors, officers, or employees; to your affiliates or any of their directors, officers, or employees; or to other individuals or organizations with whom you have an interest that might affect the exercise of your best judgment.

(b) *Exceptions.*—(1) *Funds for which you have investment discretion.* You may lend, sell or otherwise transfer assets of a fiduciary account for which you have investment discretion to yourself or any of your directors, officers, or employees; to your affiliates or any of their directors, officers, or employees; or to other individuals or organizations with whom you have an interest that might affect the exercise of your best judgment, if you meet one of the following conditions:

(i) The transaction is authorized by applicable law.

(ii) Legal counsel advises you in writing that you have incurred, in your fiduciary capacity, a contingent or potential liability. Upon the sale or transfer of assets, you must reimburse the fiduciary account in cash in an amount equal to the greater of book or market value of the assets.

(iii) The transaction is permitted under 12 CFR 9.18(b)(8)(iii) for defaulted fixed-income investments.

(iv) The OTS requires you to do so.

(2) *Funds held as trustee.* You may make loans of funds held in trust to any of your directors, officers, or employees if the funds are held in an employee benefit plan and the loan is made in accordance with the exemptions found at section 408 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108).

§ 550.360 May I make a loan to a fiduciary account that is secured by an interest in the assets of the account?

You may make a loan to a fiduciary account that is secured by an interest in the assets of the account, if the transaction is fair to the account and is not prohibited by applicable law.

§ 550.370 May I sell assets or lend money between fiduciary accounts?

You may sell assets or lend money between fiduciary accounts, if the transaction is fair to both accounts and is not prohibited by applicable law.

Compensation, Gifts, and Bequests

§ 550.380 May I earn compensation for acting in a fiduciary capacity?

If the amount of your compensation for acting in a fiduciary capacity is not set or governed by applicable law, you may charge a reasonable fee for your services.

§ 550.390 May my officer or employee retain compensation for acting as a co-fiduciary?

You may not permit your officers or employees to retain any compensation for acting as a co-fiduciary with you in the administration of a fiduciary account, except with the specific approval of your board of directors.

§ 550.400 May my fiduciary officer or employee accept a gift or bequest?

You may not permit any fiduciary officer or employee to accept a bequest or gift of fiduciary assets, unless the bequest or gift is directed or made by a relative of the officer or employee or is specifically approved by your board of directors.

Recordkeeping Requirements

§ 550.410 What records must I keep?

You must keep adequate records for all fiduciary accounts. For example, you must keep documents on the establishment and termination of each fiduciary account.

§ 550.420 How long must I keep these records?

You must keep fiduciary records for three years after the termination of the account or the termination of any litigation relating to the account, whichever is later.

§ 550.430 Must I keep fiduciary records separate and distinct from other records?

You must keep fiduciary records separate and distinct from your other records.

Audit Requirements

§ 550.440 When do I have to audit my fiduciary activities?

(a) *Annual Audit.* If you do not use a continuous audit system described in paragraph (b) of this section, then you must arrange for a suitable audit of all significant fiduciary activities at least once during each calendar year.

(b) *Continuous audit.* Instead of an annual audit, you may adopt a continuous audit system. Under a continuous audit system, you must arrange for a discrete audit of each significant fiduciary activity (*i.e.*, on an activity-by-activity basis) at an interval commensurate with the nature and risk of that activity. Some fiduciary activities may receive audits at intervals greater or less than one year, as appropriate.

§ 550.450 What standards govern the conduct of the audit?

Auditors must follow generally accepted standards for attestation engagements and other standards established by the OTS. An audit must ascertain whether your internal control policies and procedures provide reasonable assurance of three things:

(a) You are administering fiduciary activities in accordance with applicable law.

(b) You are properly safeguarding fiduciary assets.

(c) You are accurately recording transactions in appropriate accounts in a timely manner.

§ 550.460 Who may conduct an audit?

Internal auditors, external auditors, or other qualified persons who are responsible only to the board of directors, may conduct an audit.

§ 550.470 Who directs the conduct of the audit?

Your fiduciary audit committee directs the conduct of the audit. Your fiduciary audit committee may consist of a committee of your directors or an audit committee of an affiliate. There are two restrictions on who may serve on the committee:

(a) Your officers and officers of an affiliate who participate significantly in administering your fiduciary activities may not serve on the audit committee.

(b) A majority of the members of the audit committee may not serve on any committee to which the board of directors has delegated power to manage and control your fiduciary activities.

§ 550.480 How do I report the results of the audit?

(a) *Annual audit.* If you conduct an annual audit, you must note the results of the audit (including significant actions taken as a result of the audit) in the minutes of the board of directors.

(b) *Continuous audit.* If you adopt a continuous audit system, you must note the results of all discrete audits conducted since the last audit report (including significant actions taken as a result of the audits) in the minutes of the board of directors at least once during each calendar year.

Subpart C—Depositing Securities With State Authorities

§ 550.490 When must I deposit securities with State authorities?

You must deposit securities with a State's authorities or, if applicable, a Federal Home Loan Bank under § 550.510, if you meet all of the following:

(a) You are located in the State.

(b) You act as a private or court-appointed trustee.

(c) The law of the State requires corporations acting in a fiduciary capacity to deposit securities with State authorities for the protection of private or court trusts.

§ 550.500 How much must I deposit if I administer fiduciary assets in more than one State?

If you administer fiduciary assets in more than one State, you must compute the amount of deposit required for each State on the basis of fiduciary assets that you administer primarily from offices located in that State.

§ 550.510 What must I do if State authorities refuse my deposit?

If State authorities refuse to accept your deposit under § 550.490, you must deposit the securities with the Federal Home Loan Bank of which you are a member. The Federal Home Loan Bank will hold the securities for the protection of private or court trusts to the same extent as if the securities had been deposited with State authorities.

Subpart D—Terminating Fiduciary Activities

Receivership or Liquidation

§ 550.520 What happens if I am placed in receivership or voluntary liquidation?

If the OTS appoints a conservator or receiver for you under part 558 of this chapter, or if you place yourself in voluntary liquidation, the receiver, conservator, or liquidating agent must promptly close or transfer all fiduciary accounts to a substitute fiduciary, in accordance with OTS instructions and the orders of the court having jurisdiction.

Surrender of Fiduciary Powers

§ 550.530 How do I surrender fiduciary powers?

If you want to surrender your fiduciary powers, you must file a certified copy of a resolution of your board of directors evidencing that intent. You must file the resolution with the OTS under § 516.1 of this chapter.

§ 550.540 When will the OTS terminate my fiduciary powers?

If, after appropriate investigation, the Regional Director is satisfied that you have been discharged from all fiduciary duties, the Regional Director will issue a written notice indicating that you are no longer authorized to exercise fiduciary powers.

§ 550.550 May I recover my deposit from State authorities?

Upon issuance of the OTS written notice under § 550.540, you may recover any securities deposited with State authorities, or a Federal Home Loan Bank, under subpart C of this part.

Revocation of Fiduciary Powers

§ 550.560 When may the OTS revoke my fiduciary powers?

The OTS may revoke your fiduciary powers if it determines that you have done any of the following:

(a) Exercised those fiduciary powers unlawfully or unsoundly.

(b) Failed to exercise those fiduciary powers for five consecutive years.

(c) Otherwise failed to follow the requirements of this part.

§ 550.570 What procedures govern the revocation?

The procedures for revocation of fiduciary powers are set forth in 12 U.S.C. 1464(n)(10). The OTS will conduct the hearing required under 12 U.S.C. 1464(n)(10)(B) under part 509 of this chapter.

Subpart E—Activities Exempt From This Part

§ 550.580 When may I act in a fiduciary capacity without obtaining OTS approval?

You do not need OTS approval under subpart B if you act in one of the following fiduciary capacities:

(a) Trustee of a trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan qualifying for specific tax treatment under section 401(d) of the Internal Revenue Code of 1954 (26 U.S.C. 401(d)).

(b) Trustee or custodian of a Individual Retirement Account within the meaning of section 408(a) of the Internal Revenue Code of 1954 (26 U.S.C. 408(a)).

(c) Trustee of a fiduciary account that involves no active fiduciary duties provided that the applicable law authorizes the savings association to act in this capacity.

§ 550.590 What standards must I observe when acting in exempt fiduciary capacities?

You must observe principles of sound fiduciary administration, including those related to recordkeeping and segregation of assets.

§ 550.600 How may I invest funds when acting in exempt fiduciary capacities?

If you act in an exempt fiduciary capacity under § 550.580, you may invest the funds of the fiduciary account in only the following:

(a) Your accounts, deposits, obligations, or securities.

(b) Other assets as the customer may direct, provided you do not exercise any investment discretion and do not directly or indirectly provide any investment advice for the fiduciary account.

§ 550.610 What disclosures must I make when acting in exempt fiduciary capacities?

If you act in an exempt fiduciary capacity under § 550.580 and fiduciary investments are not limited to accounts or deposits insured by the FDIC, you must include the following language in bold type on the first page of any contract documents:

Funds invested pursuant to this agreement are not insured by the Federal Deposit Insurance Corporation (''FDIC'') merely because the trustee or custodian is a Federal savings association the accounts of which are covered by such insurance. Only investments in the accounts of a Federal savings association are insured by the FDIC, subject to its rules and regulations.

§ 550.620 May I receive compensation for acting in exempt fiduciary capacities?

You may receive reasonable compensation.

PART 563e—COMMUNITY REINVESTMENT

4. The authority citation for part 563e continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1814, 1816, 1828(c) and 2901 through 2907.

5. Section 563e.11 is amended by revising paragraph (c) to read as follows:

§ 563e.11 Authority, purposes, and scope.

* * * * *

(c) *Scope*—(1) *General*. This part applies to all savings associations except as provided in paragraph (c)(2) of this section.

(2) *Certain special purpose savings associations*. This part does not apply to special purpose savings associations that do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business, other than as incident to their specialized operations. These associations include banker's banks, as defined in 12 U.S.C. 24 (Seventh), and associations that engage only in one or more of the following activities: providing cash management controlled disbursement services or serving as correspondent associations, trust companies, or clearing agents.

PART 571—STATEMENTS OF POLICY

6. The authority citation for part 571 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464.

§ 571.15 [Removed]

7. Section 571.15 is removed.

Dated: December 19, 1997.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 97–33726 Filed 12–29–97; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–17–AD; Amendment 39–10263; AD 97–26–20]

RIN 2120–AA64

Airworthiness Directives; Aviat Aircraft Inc. Models S–2A, S–2B, and S–2S Airplanes (formerly Pitts Models S–2A, S–2B, and S–2S airplanes)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive AD 96–09–08 R1, which applies to Aviat Aircraft Inc. (Aviat) Models S–2A, S–2B, and S–2S airplanes (formerly Pitts Models S–2A, S–2B, and S–2S), and currently requires repetitively inspecting the upper longerons just aft of the rear cabane struts for cracks and repairing any cracks. This action retains the same actions as the current AD; lengthens the time interval between repetitive inspections; requires either installing a marked accelerometer in order to continue to perform acrobatic maneuvers and installing a placard that specifies gravity (''g'') force limitations, or installing a placard prohibiting acrobatic maneuvers; and, requires inserting revisions into the Airplane Flight Manual (AFM). This action is the result of reports of cracking in the upper longerons caused by operating the airplane outside of the certificated design limits and the availability of a design modification that, when incorporated, repairs the damaged upper longeron area. The actions specified by this AD are intended to prevent cracking and subsequent failure of the longerons with consequent loss of control of the airplane.

DATES: Effective January 22, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of January 22, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Aviat Aircraft Inc., P. O. Box 1240, 672 South Washington Street, Afton, Wyoming, 83110; telephone (307) 886–3151; facsimile (307) 886–9674. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 97–CE–17–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: Roger Caldwell, Project Engineer, FAA, Denver Aircraft Certification Office, 26805 East 68th Ave., Room 214, Denver, Colorado 80216; telephone (303) 342–1086; facsimile (303) 342–1088.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to supersede AD 96–09–08 R1, Amendment 39–9690 (61 FR 35936, No. 132, July 9, 1996), that applies to Aviat Models S–2A, S–2B, and S–2S airplanes (formerly Pitts Models S–2A, S–2B, and S–2S), was published in the **Federal Register** on May 30, 1997 (62 FR 29309). AD 96–09–08 R1 currently requires repetitively inspecting the longerons around the rear cabane struts for cracks on Aviat Models S–2A (all serial numbers (S/N)), S–2B (S/N 5000 through 5350), and S–2S (all S/N), and repairing and reinforcing any crack found during the inspections. The proposed AD would supersede AD 96–09–08 R1 with a new AD that would require:

(1) Repetitively inspecting the upper longerons aft of the rear cabane struts

and forward of the instrument panel for cracks;

(2) Modifying any cracked longeron found during any inspection required by the proposed AD by incorporating Aviat Kit No. S–2–513;

(3) Inserting the revisions referenced in the Aviat SB No. 24, Date: March 20, 1996, Revised: November 22, 1996 into the AFM; and

(4) Accomplishing one of the following:

—Installing a redlined accelerometer marked at the +6g and −3g hash marks indicating the acrobatic ''g'' force limitations and a placard (part number 2–7604–47) stating the ''g'' force limitations; or

—Fabricating and installing a placard in the pilot's clear view using at least ⅛-inch letters that incorporate the words:

''ACROBATIC MANEUVERS PROHIBITED.''

Accomplishment of this action would be in accordance with the Aviat Aircraft Inc. Service Bulletin No. 24, Date: March 20, 1996; Revised: November 22, 1996, and Aviat Aircraft Inc. Installation Instructions to Kit No. S–2–513, dated August 26, 1996; Revised May 9, 1997.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Several comments were received on the proposed rule. Due consideration has been given to the following comments.

A commenter suggested that the Aviat Pitts Model S–2A be eliminated from the applicability of the action because the aircraft does not have enough horsepower to sustain airspeeds that will damage the airframe structure.

The FAA does not concur. The FAA is obligated to address the whole fleet (all models) since it is possible to exceed the fatigue limits on all models regardless of horsepower. The aircraft weight and maneuver entry speed is the factor that drives the resultant gravity (''g'') load. All of the Aviat models addressed can enter a snap roll while in a dive with the airspeed higher than the recommended entry speed. The final rule will not be changed as a result of this comment.

A commenter wanted the FAA to withdraw the NPRM because no fleet-wide problem exists.

The FAA does not concur. The reason this action was taken is because of four known incidents where cracked longerons were the cause. After additional investigation, tests showed that exceeding the ''g'' force limitations causes stress to the longerons, thus producing cracks. Therefore, the FAA is requiring additional measures to assure that the operation of the affected airplanes does not exceed the certification limits. The FAA also wants to assure that the affected airplanes are flying without cracks. If the upper longerons are not repetitively inspected for cracks, then the airplane is susceptible to an unsafe condition. The final rule will not be changed as a result of this comment.

One commenter suggested that the frequency of the longeron inspection occur at every 100-hour time-in-service (TIS) intervals.

The FAA concurs and notes that a 100 hour TIS interval for repetitive inspections of the upper longeron area was proposed in the NPRM. The final rule will not be changed as a result of this comment.

A commenter wants the ''g'' limitation placard to read ''+4.5g and −2.5g while performing a snap roll maneuver'' because the twisting forces imposed on the airframe by snap rolls are more likely to cause structural failure than straight positive ''g'' force.

The FAA does not concur. There has been no convincing analysis to indicate that anything less than the original certificated maximum ''g'' force levels of +6 and −3 should not be the airplane operating limits. The final rule will not be changed as a result of this comment.

Another commenter suggested inspecting the fuselage for structural damage if a ''g'' factor of +6 is exceeded during landing. The commenter did not provide any justification to support this argument. As a result, this comment will not change the final rule.

One commenter wanted a requirement to mark the accelerometers at the operating limitations. The FAA agrees. This requirement was proposed in the NPRM. The final rule will not change as a result of this comment.

A commenter suggested delaying the final rule pending further study of the effect of snap roll maneuvers because the AD does not recognize or discuss the twisting forces imposed on the airframe by snap rolling maneuvers, and that the snap roll maneuvers result in a higher ''g'' force than straight positive ''g'' forces.

The FAA does not concur. Flight test analysis shows that the original operating limits that were determined during certification of these airplanes are adequate as long as the operator flies the airplane within the ''g'' force limits. The final rule will not change as a result of this comment.

Another comment requested that the FAA delete the requirement for the placard on the accelerometer. No justification was presented for this request. The FAA has determined that this placard is necessary to fully address the unsafe condition. The final rule will not change as a result of this comment.

One comment recommended amending the aircraft documents to reflect a mandatory VNE (never exceed speed) for snap roll maneuvers to limit the ''g'' force loads. The commenter presented no justification for this recommendation.

The FAA does not concur. This recommendation offers no benefit over the already proposed placard placed near the accelerometer because the flight manual already states the certificated operating ''g'' limits and entry speeds for maneuvers.

Aviat Aircraft Inc. commented that they agree with the need for the AD, but Aviat felt that the general theme of the preamble to the NPRM was degrading and made hostile references to the Aviat airplanes. Aviat submitted a re-written preamble to NPRM. The FAA did not re-print this submission as part of the final rule comments because the comments made did not speak to the AD only to the discussion in the preamble of the NPRM. The preamble to the NPRM is not published as part of the final rule. Therefore, this final rule is not changed as a result of this comment. The document submitted can be obtained by written request to the Office of the Regional Counsel's Rules Docket found in the **ADDRESSES** section of this AD.

The FAA's Determination

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.

Cost Impact

The FAA estimates that 500 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 8 workhours per airplane to accomplish the initial inspection and modification, and that the average labor rate is approximately $60 an hour. The installation of the revisions to the AFM and the placard may be performed by the owner/operator holding at least a private pilot certificate as authorized by §§ 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9). Therefore, the only labor cost associated with this step is the time of the owner/

operator. Parts costs are estimated to be approximately $400 for Aviat Kit No. S–2–513 and $10 for the placard. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $445,000 or $890 per airplane. The estimated cost does not account for the repetitive inspections because the FAA has no way to determine the number of repetitive inspections that might be incurred over the life of the airplane. The manufacturer has informed the FAA that they have distributed kits to reinforce 4 airplanes. With this in mind, the approximate cost for this AD on U.S. operators will be reduced from $445,000 to $441,440.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A 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 removing airworthiness directive (AD) 96–09–08 R1, Amendment No. 39–9690 and by adding a new AD to read as follows:

97–26–20 Aviat Aircraft Inc.: Amendment No. 39–10263; Docket No. 97–CE–17–AD; Supersedes AD 96–09–08 R1, Amendment 39–9690.

Applicability: Models S–2A (all serial numbers (S/N)), S–2B (S/N 5000 through 5350), and S–2S (all serial numbers) airplanes (formerly Pitts Models S–2A, S–2B, and S–2S), certificated in any category.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent cracking and subsequent failure of the longerons with consequent loss of control of the airplane, accomplish the following:

(a) At the accumulation of 300 hours total time-in-service (TIS) or within the next 25 hours TIS after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 100 hours TIS, inspect (using a 10x magnifying glass) the longerons aft of the rear cabane strut and forward of the instrument panel for cracks in accordance with paragraphs A. 1. through A. 4. and Figure 1 in the ACCOMPLISHMENT INSTRUCTIONS of Aviat Aircraft Inc. (Aviat) Service Bulletin (SB) No. 24, Date: March 20, 1996, Revised: November 22, 1996.

(1) Disregard the instructions in paragraph A. 5. in the ACCOMPLISHMENT INSTRUCTIONS of Aviat SB No. 24, Date: March 20, 1996, Revised: November 22, 1996. This AD takes precedence over the instructions in paragraph A. 5 referenced above.

(2) If cracks are found during any inspection required by this AD, prior to further flight, modify the cracked area by incorporating Aviat Kit No. S–2–513 in accordance with the INSTALLATION INSTRUCTIONS section in Aviat Kit No. S–2–513, dated August 26, 1996, Revised: May 9, 1997.

(3) The modification does not eliminate the 100-hour TIS interval repetitive inspections.

(b) At the accumulation of 300 hours total TIS or within the next 25 hours TIS after the effective date of this AD, whichever occurs later, insert revisions to the Airplane Flight Manual (AFM) in accordance with paragraph B. 2. in the ACCOMPLISHMENT INSTRUCTIONS of Aviat SB No. 24, Dated: March 20, 1996, Revised November 22, 1996.

(c) At the accumulation of 300 hours total TIS or within the next 25 hours TIS after the effective date of this AD, whichever occurs later, accomplish either (c)(1) or (c)(2) below:

(1) Install an accelerometer and permanently mark the face with red marks (3/16-inch × 1/16-inch) at the +6 g and −3 g hash marks, and install a placard (Aviat part number 2–7604–47) stating the gravity (''g'') force limitations within the pilot's clear view in accordance with paragraph B. 1. of the ACCOMPLISHMENT INSTRUCTIONS in Aviat SB No. 24, Date: March 20, 1996, Revised: November 22, 1996; or

(2) Fabricate and install a placard in the pilot's clear view using at least 1/8-inch letters that incorporates the following words:

''ACROBATIC MANEUVERS PROHIBITED.''

(d) The installation of the placard and the insertion of the revisions into the AFM may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this action can be accomplished, provided no cracks are found during any inspections required by paragraph (a) of this AD. No special flight permits may be issued to any airplane with cracks in the upper longerons just aft of the rear cabane struts.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Denver Aircraft Certification Office, 26805 East 68th Ave., Room 214, Denver, Colorado 80216. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Denver Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Denver Aircraft Certification Office.

(g) The inspection, modification, and replacements required by this AD shall be done in accordance with Aviat Aircraft Inc. Service Bulletin (SB) No. 24, Revised: November 22, 1996, and Aviat Aircraft Inc. Installation Instructions in Aviat Aircraft Inc. Kit No. S–2–513, dated August 26, 1996, Revised: May 9, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aviat Aircraft Inc., The Airport-Box No. 1240, 672 South Washington Street, Afton, Wyoming, 83110. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800

North Capitol Street, NW., suite 700, Washington, DC.

(h) This Amendment supersedes AD 96–09–08 R1, Amendment 39–9690.

(i) This Amendment (39–10263) becomes effective on January 22, 1998.

Issued in Kansas City, Missouri, on December 16, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–33512 Filed 12–29–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

14 CFR Part 73

[Airspace Docket No. 97–ANE–101]

RIN 2120–AA66

Change of Using Agency for Restricted Areas R–4105A and R–4105B; No Man's Land Island, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the using agency for Restricted Areas R–4105A (R–4105A) and R–4105B (R–4105B), No Man's Land Island, MA, from the ''U.S. Navy, Commanding Officer, Naval Air Station (NAS) South Weymouth, MA,'' to ''Air National Guard (ANG), 104th Fighter Wing, Barnes Municipal Airport, Westfield, MA.'' This change is required due to the closure of NAS South Weymouth.

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

The Defense Base Realignment and Closure Commission directed the closure of NAS South Weymouth, MA, which is currently the designated using agency for R–4105A and R–4105B. However, the ANG 104th Fighter Wing has been a long-time co-user of the range and, as such, has a continuing requirement for these restricted areas. By this action, the 104th Fighter Wing is being designated as the using agency since it has become the primary user of the restricted areas.

The Rule

This action amends 14 CFR part 73 by changing the using agency for R–4105A and R–4105B, No Man's Land Island, MA, from ''U.S. Navy, Commanding Officer, NAS South Weymouth, MA,'' to ''ANG, 104th Fighter Wing, Barnes Municipal Airport, MA.'' This administrative change will not alter the boundaries, altitudes, time of designation, or activities conducted within the restricted areas; therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Section 73.41 of part 73 was republished in FAA Order 7400.8E, dated November 7, 1997.

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 is a minor administrative change to amend the designated using agency of existing restricted areas. There are no changes to air traffic control procedures or routes as a result of this action. Therefore, this action is not subject to environmental assessments and procedures in accordance with 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—SPECIAL USE AIRSPACE

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. § 73.41 is amended as follows:

* * * * *

R–4105A No Man's Land Island, MA [Amended]

By removing ''Using agency. U.S. Navy, Commanding Officer, NAS South Weymouth, MA'' and adding ''Using agency. ANG, 104th Fighter Wing, Barnes Municipal Airport, Westfield, MA'' in its place.

* * * * *

R–4105B No Man's Land Island, MA [Amended]

By removing ''Using agency. U.S. Navy, Commanding Officer, NAS South Weymouth, MA'' and adding ''Using agency. ANG, 104th Fighter Wing, Barnes Municipal Airport, Westfield, MA'' in its place.

* * * * *

Issued in Washington, DC, on December 19, 1997.

Nancy B. Kalinowski,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–33867 Filed 12–29–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–22]

RIN 2120–AA66

Modification of VOR Federal Airway V–204; Yakima, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reduces the width of Very High Frequency Omnidirectional Range (VOR) Federal Airway V–204 east of the Yakima, WA, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) from 4 to 3 nautical miles (NM) north of the airway centerline. Currently, the northern edge of V–204 penetrates Special Use Airspace Restricted Area R–6714 (R–6714), thus creating an inefficient and potentially hazardous situation. The FAA is taking this action to enhance the safety and efficiency of aircraft operations in the vicinity of Yakima VORTAC.

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Bil Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

The Rule

This action amends 14 CFR part 71 by modifying V–204. Specifically, this action reduces the width of the V–204 from 4 to 3 NM north of the airway centerline, along a portion of the Federal airway between the Yakima VORTAC and the PAPPS Intersection. The standard width of a VOR Federal airway is 8 NM (4 NM each side of the airway centerline). Currently, the northern edge of V–204 penetrates R–6714. This penetration increases the potential for conflict between aircraft operating along that portion of V–204 and users operating within R-6714, and reduces air traffic control efficiency by preventing simultaneous use of V–204 and R–6714 during nonradar operations. Since V–204, as currently described, penetrates R–6714, immediate, corrective action is required in the interest of flight safety. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. The FAA is taking this action to enhance the safety and efficiency of aircraft operations in the vicinity of the Yakima VORTAC.

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

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9E, dated September 10, 1997 and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The airway listed in this document will be published subsequently in the Order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–204 [Revised]

From Hoquiam, WA; Olympia, WA; INT Olympia 114° and Yakima, WA, 271° radials; Yakima; 25 miles, 7 miles wide (3 miles N and 4 miles S of centerline) INT Yakima 087° and Pasco, WA, 269° radials; Pasco; INT Pasco 035° and Spokane, WA, 221° radials; to Spokane.

* * * * *

Issued in Washington, DC, on December 19, 1997.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–33866 Filed 12–29–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–QWP–2]

RIN 2120–AA66

Amendment of Legal Descriptions of Federal Airways; Porterville, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the legal descriptions of two Federal airways that include the Porterville Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) as part of their route structure. Currently, the VOR/DME and the Porterville Municipal Airport share the ''Porterville'' name, even though they are not collocated. This situation has led to confusion among users. To eliminate this confusion, the ''Porterville VOR/DME'' will be renamed the ''Tule VOR/DME.'' The effective date of this name change will coincide with this rulemaking action. This action amends the legal descriptions of those airways affected by the VOR/DME name change.

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Bil Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

The Rule

This action amends 14 CFR part 71 (part 71) by amending the legal descriptions of VOR Federal Airways V–165 and V–459. Currently, the VOR/DME and the Porterville Municipal Airport share the name ''Porterville.'' The fact that the VOR/DME is located approximately 7.3 Nautical Miles southeast of the airport has led to confusion among users because the VOR/DME and the airport are not collocated. To eliminate the confusion, the ''Porterville VOR/DME'' will be renamed the ''Tule VOR/DME.'' Due to the name change of the Porterville navigational aid, the FAA is taking this action to amend the affected VOR Federal airways to reflect the VOR/DME name change.

Since this action merely involves changes in the legal description of Federal airways, and does not involve a change in the dimensions or operating requirements of that airspace, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

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

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

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The airways listed in this document will be published subsequently in the Order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–165 [Revised]

From Mission Bay, CA; INT Mission Bay, 270° and Oceanside, CA, 177° radials; Oceanside; 24 miles, 6 miles wide, Seal Beach, CA; 6 miles wide, INT Seal Beach 287° and Los Angeles, CA, 138° radials; Los Angeles; INT Los Angeles 357° and Lake Hughes, CA, 154° radials; Lake Hughes; INT Lake Hughes 344° and Shafter; Tule, CA; INT Tule 339° and Clovis, CA, 139° radials; Clovis; 68 miles, 50 miles, 131 MSL, Mustang, NV; 40 miles, 12 AGL, 7 miles, 115 MSL, 54 miles, 135 MSL, 81 miles, 12 AGL, Lakeview, OR; 5 miles, 72 miles, 90 MSL, Deschutes, OR; 16 miles, 19 miles, 95 MSL, 24 miles, 75 MSL, 12 miles, 65 MSL, Newburg, OR; 32 miles, 45 MSL, INT Newburg 355° and Olympia, WA, 195° radials; Olympia 010° and Seattle, WA, 249° radials; Seattle.

* * * * *

V–459 [Revised]

From Seal Beach, CA, Lake Hughes, CA; Tule, CA; Friant, CA; INT Friant 319° and Linden, CA, 124° radials; Linden.

* * * * *

Issued in Washington, DC, on December 19, 1997.

Nancy B. Kalinowski,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–33864 Filed 12–29–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–4]

RIN 2120–AA66

Realignment of Jet Routes; Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule realigns 14 jet routes located in the Dallas/Fort Worth (DFW), TX, area. These realignments will remove all high altitude navigation routes from the DFW Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and realign them to existing navigational aids (NAVAID) located in the DFW area. This action completes a portion of a master plan to relocate the DFW VORTAC 3/4 nautical miles (NM) to the west of its current position and to provide more NAVAID capacity for airport traffic use by eliminating the high altitude en route traffic service. Additionally, Jet Route 66 (J–66) is further realigned west of the DFW area to include the Big Springs, TX, VORTAC as part of its route structure. This realignment will allow pilots to fly at lower minimum en route altitudes (MEA) between the Newman, TX, and Abilene, TX, VORTACs.

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Steve Brown, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On August 28, 1997, the FAA proposed to amend 14 CFR part 71 to realign 14 jet routes located in the DFW, TX, area and realign J–66 west of the DFW area (62 FR 45591). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Jet routes are published in paragraph 2004 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The jet routes listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 realigns 14 jet routes located in the DFW area. These realignments will remove all high altitude navigation routes from the DFW VORTAC. Ten of the jet routes will use the Ranger, TX, VORTAC, which is located approximately 8 NM to the west. One jet route will use the Cowboy, TX, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME), which is located approximately 6.5 NM to the east. Two jet routes will terminate at the Wichita Falls, TX, VORTAC rather than continue to the DFW area. These particular two jet routes originally terminated at the DFW VORTAC. The remaining jet route bypasses DFW altogether by proceeding direct from the Ardmore, OK, VORTAC to the Texarkana, AR, VORTAC. The DFW VORTAC will no longer service high altitude en route traffic, thereby increasing NAVAID capacity for DFW International Airport traffic area use.

Additionally, J–66 is further realigned west of the DFW area to include the Big Springs, TX, VORTAC as part of its route structure. This realignment allows pilots to fly at lower MEA on J–66 between the Newman, TX, and Abilene, TX, VORTACs.

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, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 2004—Jet Routes

* * * * *

J–4 [Revised]

From Los Angeles, CA, via INT Los Angeles 083° and Twentynine Palms, CA, 269° radials; Twentynine Palms; Parker, CA; Buckeye, AZ; San Simon, AZ; Newman, TX; Wink, TX; Abilene, TX; Ranger, TX; Belcher, LA; Jackson, MS; Meridian, MS; Montgomery, AL; INT Montgomery 051° and Colliers, SC, 268° radials; Colliers; Columbia, SC; Florence, SC; to Wilmington, NC.

* * * * *

J–21 [Revised]

From the INT of the United States/Mexican Border and the Laredo, TX, 172° radial via Laredo; San Antonio, TX; Austin, TX; Waco, TX; Ranger, TX; Ardmore, OK; Will Rogers, OK; Wichita, KS; Omaha, NE; Gopher, MN; to Duluth, MN.

* * * * *

J–25 [Revised]

From Matamoras, Mexico, via Brownsville, TX; INT of the Brownsville 358° and the Corpus Christi, TX, 178° radials; Corpus Christi; INT of the Corpus Christi 311° and the San Antonio, TX, 167° radials; San Antonio; Austin, TX; Waco, TX; Ranger, TX; Tulsa, OK; Kansas City, MO; Des Moines, IA; Mason City, IA; Gopher, MN; Brainerd, MN; to Winnipeg, MB, Canada. The airspace within Canada is excluded. The airspace within Mexico is excluded.

* * * * *

J–33 [Revised]

From Humble, TX, via INT Humble 349° and Ranger, TX, 135° radials; to Ranger.

* * * * *

J–42 [Revised]

From Delicias, Mexico, via Fort Stockton, TX; Abilene, TX; Ranger, TX; Texarkana, AR; Memphis, TN; Nashville, TN; Beckley, WV; Montebello, VA; Gordonsville, VA; Nottingham, MD; INT Nottingham 061° and Woodstown, NJ, 225° radials; Woodstown; Robbinsville, NJ; LaGuardia, NY; INT LaGuardia 042° and Hartford, CT, 236° radials; Hartford; Putman, CT; Boston, MA. The portion of this route outside of the United States is excluded.

* * * * *

J–52 [Revised]

From Vancouver, BC, Canada; via Spokane, WA; Salmon, ID; Dubois, ID; Rock Springs, WY; Falcon, CO; Hugo, CO; Lamar, CO; Liberal, KS; INT Liberal 137° and Ardmore, OK, 309° radials; Ardmore; Texarkana, AR; Sidon, MS; Bigbee, MS; Vulcan, AL; Atlanta, GA; Colliers, SC; Columbia, SC; Raleigh-Durham, NC; to Richmond, VA. The portion within Canada is excluded.

* * * * *

J–58 [Revised]

From Oakland, CA, via Manteca, CA; Coaldale, NV; Wilson Creek, NV; Milford, UT; Farmington, NM; Las Vegas, NM; Amarillo, TX; Wichita Falls, TX; Ranger, TX; Alexandria, LA; Harvey, LA; INT of Grand Isle, LA, 105° and Crestview, FL, 201° radials; INT of Grand Isle 105° and Sarasota, FL, 286° radials; Sarasota; Lee County, FL; to the INT Lee County 120° and Dolphin, FL, 293° radials; Dolphin.

* * * * *

J–66 [Revised]

From Newman, TX; via Big Spring, TX; Abilene, TX; Ranger, TX; Bonham, TX; Little Rock, AR; Memphis, TN; to Rome, GA.

* * * * *

J–72 [Revised]

From Boulder City, NV, via Peach Springs, AZ; Gallup, NM; Albuquerque, NM; Texico, NM; to Wichita Falls, TX.

* * * * *

J–76 [Revised]

From Las Vegas, NV, via INT Las Vegas 090° and Tuba City, AZ, 268° radials; Tuba City; Las Vegas, NM; Tucumcari, NM; to Wichita Falls, TX.

* * * * *

J–87 [Revised]

From Humble, TX, via Navasota, TX; INT of Navasota 342° and Cowboy, TX, 166° radials; Cowboy; Tulsa, OK; Butler, MO; Kirksville, MO; Moline, IL; Joliet, IL; to Northbrook, IL.

* * * * *

J–105 [Revised]

From Ranger, TX; via McAlester, OK; Razorback, AR; Springfield, MO; Bradford, IL; to Badger, WI.

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J–131 [Revised]

From San Antonio, TX, via INT San Antonio 007° and Ranger, TX, 214° radials; Ranger; Texarkana, AR; Little Rock, AR; to Pocket City, IN.

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J–181 [Revised]

From Ranger, TX; Okmulgee, OK; Neosho, MO; INT Neosho 049° and Bradford, IL, 219° radials; to Bradford.

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Issued in Washington, DC, on December 17, 1997.

Nancy B. Kalinowski,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–33761 Filed 12–29–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 622

[Docket No. 971009242–7308–02; I.D. 091997B]

RIN 0648–AJ14

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 15; OMB Control Numbers

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

ACTION: Final rule; extension of effectiveness.

SUMMARY: NMFS issues this final rule to implement the approved measures in Amendment 15 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). Amendment 15 and this rule replace the current commercial red snapper endorsement and trip limit system with a system comprised of two classes of transferrable red snapper licenses and trip limits; split the red snapper commercial fishing season into two time periods, the first commencing February 1 with two-thirds of the annual quota available and the second commencing on September 1 with the remainder of the annual quota available; open the red snapper commercial fishery at noon on the first of each month and close it at noon on the 15th of each month during the commercial season; prohibit the possession of reef fish in excess of the bag limit on a vessel that has on board, or is tending, a trap other than a fish, stone crab, or spiny lobster trap; limit the harvest of greater amberjack to the bag limit each year during March

through May; remove sea basses (black, bank, and rock sea bass), grunts, and porgies from the FMP; and remove certain species from the aggregate bag limit for reef fish. As approved in Amendment 15, the increase in the minimum size limit for vermilion snapper, currently in effect as an interim measure, is continued indefinitely. In addition, this rule excludes certain species from the prohibition on their harvest using powerheads in the stressed area and corrects and clarifies the regulations. Finally, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this rule, publishes the OMB control number for these collections, and corrects the list of control numbers applicable to Title 50 of the Code of Federal Regulations. The intended effects of this rule are to conserve and manage the reef fish resources of the Gulf of Mexico. This rule also extends indefinately the effectiveness of the interim final rule regarding vermilion snapper size limit, published September 11, 1997.

DATES: This rule is effective January 29, 1998, except that the amendments to 15 CFR 902 and §§ 622.4(d) and (p), and 622.7(b) are effective December 30, 1998, and § 622.34(l) is effective January 1, 1997. The interim final rule published on September 11, 1997 (62 FR 47765), which became effective September 14, 1997, through March 10, 1998, is to continue in effect indefinitely.

ADDRESSES: Copies of the final regulatory flexibility analysis (FRFA) may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments regarding the collection-of-information requirements contained in this rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Management and Budget (OMB), Washington, D.C. 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 813–570–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On September 26, 1997, NMFS announced the availability of Amendment 15 and requested comments on the amendment (62 FR 50553). On October 23, 1997, NMFS published a proposed rule to implement the measures in Amendment 15 and an additional measure proposed by NMFS, and requested comments on the rule (62 FR 55205). The background and rationale for the measures in the amendment and proposed rule are contained in the preamble to the proposed rule and are not repeated here. On December 19, 1997, after considering the comments received on the amendment and the proposed rule, NMFS partially approved Amendment 15. One measure was not approved, namely, the exclusion of hogfish and queen triggerfish from the aggregate bag limit for reef fish.

Comments and Responses

Twenty public comments on Amendment 15 and/or the proposed rule, including a minority report signed by two Council members, were received. Comments in support of one or more Amendment 15 measures were submitted by 13 entities (including one fishing association), one of which submitted a petition signed by 42 persons. Comments in opposition to one or more Amendment 15 measures were submitted in the minority report and by 15 entities, including two fishing associations.

Initial Allocation of Red Snapper Licenses

Comment: The minority report and one commenter objected to the initial allocation provisions of the red snapper license system on the basis that the proposed 2-tier system did not recognize the request of some of the major producers (highliners) for an alternative 3-tier system. That commenter also stated that continuation of the existing trip limits (instead of a reduced trip limit for some vessels) does not address excessive harvest capacity in the red snapper fishery. Another commenter supported trip limits and endorsements but opposed issuance of licenses. A third commenter, who participates in multiple commercial fisheries, opposed the initial red snapper license allocation, since those provisions preclude vessels without endorsements on March 1, 1997, from obtaining a Class 1 license and, therefore, sufficient income to remain profitable. The minority report recommends that NMFS not approve Amendment 15 until some solution to resolving the perceived inequity associated with the 2–tier system is agreed upon.

One of the commenters also noted that charter vessels with red snapper licenses could fish commercially and, thereby, continue to exploit the red snapper resource during winter when charter business is slow. That commenter also claimed that the initial allocation of Class 1 licenses gives an unfair advantage to endorsement holders because they would be allowed to fish in other fisheries when the red snapper commercial fishery is closed. Another commenter opposed the initial allocation of Class 1 licenses to all who held endorsements on March 1, 1997, because that criterion does not specifically recognize various levels of investment in red snapper vessels and gear by the endorsement holders.

Response: NMFS disagrees with these comments for the following reasons. After much debate, the Council concluded that its proposed 2–tier red snapper commercial license limitation system was the fairest and most equitable of the alternatives considered for meeting the objectives of Amendment 15. The 2–tier license system provides for equal trip limits for all endorsement holders, as under the endorsement and trip limits system. The rejected 3-tier alternative was found to be inequitable since that system would have significantly reduced the landings of many of the endorsement holders. Regarding excessive harvest capacity, Amendment 15 addresses this problem by establishing a license limitation system that caps participation in the fishery and is expected to reduce the number of vessels that can fish under the 200–lb (91–kg) trip limit. The actual level of harvest is controlled by an annual quota.

NMFS also disagrees with the comment opposing charter vessel participation. The Council considered historical fishing practices in, and dependence on, the fishery, as required by the Magnuson-Stevens Act, and chose not to exclude charter vessels from an initial allocation. Amendment 15 recognizes that some charter vessels traditionally target red snapper for commercial harvest during the season when charter business is slow. The Council's decision in this regard is consistent with the FMP, which allows charter income to count toward the earned income requirement for commercial vessel permits.

NMFS disagrees with the commenter who claimed that the initial allocation of Class 1 licenses gives unfair advantage to endorsement holders, who would receive Class 1 licenses, because they will be allowed to fish in other

fisheries when the commercial red snapper fishery is closed. The license limitation system makes no changes in the provisions of the current endorsement and trip limits system that allow an endorsement holder to participate freely in other fisheries, regardless of whether the commercial red snapper fishery is open. Also, neither the endorsement and trip limits system nor the license limitation system differentiate between Class 1 and Class 2 license holders with regard to their ability to participate in other fisheries. Furthermore, all Class 1 license holders must comply with the same trip limits regardless of whether they participate in other fisheries. Finally, NMFS believes that Class 1 and Class 2 license holders should be allowed equally to enter other fisheries in compliance with applicable regulations regardless of whether the commercial red snapper fishery is closed.

NMFS agrees with the comment that the initial allocation criterion for a Class 1 license does not specifically address the level of investment in gear or vessels. However, to obtain a Class 1 license, an applicant must possess an endorsement on March 1, 1997. Eligibility for such an endorsement was based on the level of historical participation in the fishery, which presumably reflects, to some degree, varying levels of investment in the fishery. Therefore, the Council and NMFS determined that this criterion for participation in the fishery was appropriate.

Comment: Another commenter stated that those individuals who will meet the eligibility criteria for the initial allocation of Class 1 licenses under Amendment 15 constitute a different group than those who would be participating in a future referendum for an individual fishing quota (IFQ) program for red snapper on or after October 1, 2000, under the provisions of section 407(c) of the Magnuson-Stevens Act. That commenter also questioned whether the Amendment 15 criterion for a Class 1 license (i.e., holder of a red snapper endorsement on March 1, 1997, or a qualified historical captain) is consistent with Congressional intent regarding who would be eligible to vote in this referendum (section 407(c) limits referendum voting eligibility to persons who held a reef fish permit with a red snapper endorsement on September 1, 1996, and to vessel captains who harvested red snapper in a commercial fishery using such endorsement in each red snapper fishing season between January 1, 1993, and September 1, 1996).

Response: The initial allocation criteria for a Class 1 license under Amendment 15 are not related, nor intended to be related, to the universe of persons that would be eligible to vote in the IFQ referendum provided for under section 407(c) of the Magnuson-Stevens Act. NMFS has determined that the initial allocation provisions of Amendment 15 are consistent with the provisions of the Magnuson-Stevens Act. Any subsequent Council or NMFS consideration of IFQ programs for red snapper will be consistent with section 407(c).

Comment: Three comments (one was signed by two persons) supported the initial allocation provisions as fair and equitable.

Response: NMFS concurs.

Historical Captains

Comment: Two commenters opposed initial allocations of red snapper Class 1 licenses to historical captains, based on the belief that this allowance would cause shorter seasons and lower red snapper prices by allowing additional fishermen to compete for the resource. Another commenter stated that issuance of two licenses (a license to a historical captain and a license to the owner who were involved in the operation of the same vessel) would unfairly penalize other types of participants who would be issued one license (such as an owner-operator).

Response: Approximately seven historical captains are expected to obtain a Class 1 license. This would not substantially increase the number of licenses so as to significantly shorten the season or unfairly penalize other types of participants.

Comment: One comment supported the historical captain provisions as being fair and equitable.

Response: NMFS concurs.

Red Snapper License Transfers

Comment: A commenter opposed providing for license transfers following the initial allocation process, based on the belief that this measure would cause shorter seasons and lower red snapper prices.

Response: NMFS disagrees with this comment and supports providing for license transfers. License transfers simplify entry into, and exit from, the fishery and thereby promote efficient fishing operations. As a result, approval of this measure will provide economic benefits that should outweigh any costs associated with decreases in red snapper prices.

Limitation on Ownership of Red Snapper Licenses

Comment: A commenter opposed the Council's preferred alternative regarding ownership of licenses by one entity (i.e., no limitation on ownership by one entity) on the grounds that no limitation could lead to a monopoly in a very short time.

Response: The Council fully considered the question of whether some limitation should be imposed to try to prevent monopolies from controlling the fishery, and determined that, even in the absence of such limitations, fishing operations linked to individuals should continue to dominate the fishery. NMFS believes that other existing Federal laws are adequate to address monopolies.

Annual Fishing Season Opening Dates

Comments: A commenter opposed the September 1 starting date for the commercial season, based on his belief that September is the peak time for red snapper aggregation and spawning. Two other commenters preferred an October 1 start for the fall season.

Response: NMFS disagrees with the comment that an October 1 starting date should be used. NMFS stock assessments indicate that the peak aggregation and spawning period for red snapper typically is June through August. The Council selected the September 1 date for opening the fall season in part to afford fishermen higher revenues when product demand is relatively high. The Council's selection of the September 1 opening date, rather than a later date, also considered the ability of fishing vessels to operate in more favorable weather conditions, thus reducing vessel safety concerns. For these reasons, NMFS approved the opening date selected by the Council.

Comment: Three comments supported this measure.

Response: NMFS concurs.

Red Snapper Harvest Periods

Comments: Two comments indicated that the proposed 15-day red snapper commercial harvest periods (15-day harvest periods) would encourage fishing in bad weather. Four commenters indicated that the 15-day harvest period in 1997 caused waste of fish and reduced prices due to the associated increases in rate of harvest and, therefore, opposed the 15-day harvest periods under Amendment 15. One commenter recommended alternatives that were considered under Amendment 15 but rejected by the Council. The minority report reiterated the need for compatible state and

Federal regulations and cooperative state and Federal enforcement to provide successful management results.

Response: The Council considered available information pertinent to this measure, including public comment and NMFS analyses predicting that total revenues generated by a series of mini-derbies (during the 15-day harvest periods) would be lower than generated under continuous fishing without such short, intermittent, harvest periods. The Council voted for the 15-day harvest periods to distribute landings over a greater portion of the year, alleviating to some extent the economic effects of a derby fishery. Also, the closed fishery periods between harvest periods will allow for vessel repair and maintenance. Such maintenance should improve safety and avoid the higher repair costs that can occur when normal, preventive maintenance is postponed.

Comments opposing the 15-day harvest periods are based on very limited experience during the 1997 fishing year, which involved open harvest periods of September 1–15 and October 1–6. NMFS believes that this experience is not an adequate basis for evaluating the effectiveness of this measure. NMFS has approved this measure but will monitor its effectiveness and, in cooperation with the Council, will make future adjustments if necessary. Regarding the minority report's concerns about enforceability, NMFS and the Council will request that the Gulf states issue compatible regulations to aid in enforcement.

Limitation of the Possession of Reef Fish Caught in Traps That Are not Fish Traps, Spiny Lobster Traps, or Stone Crab Traps

Comment: Two comments supported this measure.

Response: NMFS concurs.

Vermilion Snapper Minimum Size Limit

Comment: A fishing association, representing 28 red snapper endorsement holders, opposed the 10–inch (25.4–cm) vermilion snapper minimum size limit because of adverse impacts expected from the associated undersized fish release mortality.

Response: NMFS disagrees with this comment, and supports this measure. The measure responds to stock assessment information that the vermilion snapper resource, while not currently overfished, is undergoing overfishing based on decreasing trends in overall catch, mean size of individual fish, catch-per-unit-effort, and estimated numbers of age–1 fish in the population. The assessment considered the effects of release mortality of undersized fish and determined that the 10–inch (25.4–cm) minimum size limit would reduce fishing mortality, increase the vermilion snapper spawning potential ratio (SPR), and, thereby, improve the status of the resource.

Comment: One comment supported the vermilion snapper size limit measure based on the belief that vermilion snapper less than 10 inches (25.4 cm) have low yield of meat. A second comment supported the measure as an appropriate measure to address overfishing.

Response: NMFS concurs.

Removal of Sea Basses, Grunts, and Porgies from the FMP

Comment: The minority report stated that the Council acted to remove sea basses (black, bank, and rock sea bass), grunts, and porgies without regard to (1) the Council's Scientific and Statistical Committee's (SSC) recommendations that these species should be under FMP management, and (2) the SSC's statement that this measure is not based on the best available scientific information. A commenter opposed this measure on the basis that there is no substantive rationale for approval by NMFS. The commenter noted that the proposed removal of species from the FMP would prevent timely implementation of Federal management measures to protect sea basses, grunts, and porgies. The commenter asked that these species be kept in the FMP even though this action may make processing of Amendment 15 more complicated.

Response: The SSC's concerns appear to be predicated on an assumption that the removal of these species from the FMP would result in no management or in ineffective management. This is not the case. Management would be deferred to Florida. The Council fully considered the SSC's recommendations prior to its vote on this measure. Amendment 15 and the preamble to the proposed rule provide a substantive rationale for this measure and explain that returning management of these species to Florida poses minimal risk to the resources. The Council concluded, and NMFS agrees, that these species would be most appropriately managed by Florida. The Florida Marine Fisheries Commission (FMFC) has expressed an intent to manage the fisheries for these species, which primarily occur off Florida. NMFS acknowledges that impacts to fishery resources due to unrestricted harvest could occur during the interim period (after sea basses, grunts, and porgies are removed from the FMP, and prior to Florida's management of those species). However, since the interim period is expected to be of very short duration, any such impacts are not expected to be substantial.

Although Florida cannot regulate out-of-state vessels operating in the Exclusive Economic Zone (EEZ) unless those vessels land fish in Florida, the threat of overfishing these species by vessels registered outside Florida is minimal for two reasons. First, landings of these species are insignificant outside Florida. Second, given the relatively low value of these species, the economic incentive for harvest in the EEZ off Florida by out-of-state vessels not landing in that state is small. NMFS, therefore, disagrees with the opposing comments and approved the removal of sea basses, grunts, and porgies from the FMP as a rational management policy decision.

Comment: Two comments supported this measure.

Response: NMFS concurs.

Greater Amberjack Seasonal Harvest Restriction

Comment: A commenter representing a commercial fishing association, a commenter representing a fish house and various fishery participants, and the minority report opposed the greater amberjack spawning seasonal harvest restriction as unnecessary and inconsistent with the NMFS stock assessment, showing a 34–percent SPR. Another commenter noted individual Council member's objections to this measure, and provided biological information on greater amberjack migration and harvest patterns. The minority report noted that the SSC recommended that this measure be deferred until FMP Amendment 16. The minority report also stated that the Council did not follow those recommendations and, therefore, did not use the best available information.

Response: Given the uncertainty associated with the NMFS stock assessment, and based on recent data showing declines in average size and landings of greater amberjack, the Council and the Reef Fish Stock Assessment Panel determined that the stock assessment is overly optimistic. The Council and NMFS believe the greater amberjack spawning seasonal harvest restriction is necessary to reduce fishing mortality, ensure that commercial effort does not negate stock rebuilding resulting from the recent recreational bag limit reduction, and provide more equitable sharing of the burden of stock rebuilding between the recreational and commercial sectors. This measure was found by the Southeast Fisheries Science Center

(SEFSC) to be based on the best available scientific information. The Council properly considered the SSC's recommendations prior to its vote on the greater amberjack spawning seasonal harvest restriction. NMFS believes that the biological information provided by the commenter does not alter the need for a spawning seasonal harvest restriction. Accordingly, NMFS disagrees with these comments and supports this measure.

Comment: Six comments (including one from a fishing association) support this measure.

Response: NMFS concurs.

Removal of Species Not in the Management Unit From the Aggregate Bag Limit for Reef Fish

Comment: Three public comments and the minority report opposed removal of hogfish from the 20-fish aggregate bag limit. The first public commenter, a commercial fisherman who also owns a wholesale fish house, stated that hogfish is heavily targeted in the recreational sector, primarily using spear guns, and is one of the easiest species to take with that gear. The comment included trade journal data that predicted a large increase in the size of the diving/snorkeling industry. The commenter concluded that hogfish would be adversely impacted by allowing unlimited recreational catches. The commenter also stated that this measure would encourage illegal sales of reef fish caught under the recreational bag limit.

A second commenter opposed excluding hogfish and queen triggerfish since those two species are overfished and scarce. A third commenter supported the Council's rejected Alternative 1 that would either (1) remove pinfish and sand perch from the aggregate bag limit, or (2) remove pinfish and sand perch but make the removal of other species subject to review by the Reef Fish Stock Assessment Panel.

Response: NMFS agrees with the commenters who noted the possibility of overfishing if hogfish and queen triggerfish are removed from the aggregate bag limit. Based on its review of the three opposing comments, the minority report, the SSC recommendations, and other available information, NMFS disapproved the removal of hogfish and queen triggerfish from the aggregate bag limit as a means of helping to prevent overfishing of these species, as discussed above. Disapproval of the removal of hogfish and queen triggerfish from the aggregate bag limit is consistent with national standard 1 of the Magnuson-Stevens Act that requires conservation and management measures to prevent overfishing.

Comment: Three public comments supported removal of sand perch and dwarf sand perch from the 20-fish aggregate bag limit.

Response: NMFS concurs.

Changes From the Proposed Rule

The implementation procedure for the initial issue of red snapper licenses is revised by changing ''appeals'' to ''reconsideration'' at § 622.4(p)(6)(ii). The change in terminology is warranted because the procedure describes the means by which a person may have the Regional Administrator reconsider his initial determination of eligibility for historical captain status or a Class 2 license. In addition, § 622.4(p)(6)(ii) is reordered for clarity and to remove redundancy. To provide adequate time for an owner to collect and submit information pertinent to his or her eligibility for a red snapper license, the deadline date for submission of a copy of a legally binding agreement under which an owner retained the landings record of a previously owned vessel is delayed to January 30, 1998. Similarly, the deadline date for the submission of a request for reconsideration of NMFS' initial determination of eligibility for historical captain status or for a Class 2 red snapper license is delayed until February 10, 1998. However, a person submitting such agreement or request after January 6 and 13, respectively, will not be assured of receiving a red snapper license before the commercial fishery for red snapper opens on February 1, 1998.

Section 622.34(l) is revised to clarify that, after the recreational quota for red snapper is reached, during a seasonal closure (i.e., during a mid- to end-of-month closure) of the commercial fishery for red snapper, possession of red snapper in or from the Gulf of Mexico and in the Gulf of Mexico on board a vessel for which a commercial permit for Gulf reef fish has been issued, without regard to where such red snapper were harvested, is limited to zero. This provision is in accordance with the possession limit applicable to the commercial fishery for red snapper when a quota closure is in effect.

As discussed above, hogfish and queen triggerfish are not excluded from the aggregate bag limit for reef fish. A change from the proposed rule is made at § 622.39(b)(1)(v).

NMFS also is making the following technical amendments, which were not included in the proposed rule:

(1) In 15 CFR 902.1(b), in the listing of sections in title 50 of the CFR where information collection requirements are located, the entry ''622.10'' is redesignated to read ''622.8'' and the entry for ''641.4'' is removed. There currently are no regulations at 50 CFR 641.4.

(2) In 50 CFR 622.34(c), the reference to Figures 1 and 2 to this part is removed and, in 50 CFR 622.34(g), the reference to Figures 3 and 4 to this part is removed. The regulations do not include Figures 1 through 4 to this part.

(3) In 50 CFR 622.43(a)(5), the reference ''§ 622.44(a),'' applicable to the trip limits for golden tilefish and snowy grouper in the snapper-grouper fishery off the southern Atlantic states, is corrected to read ''§ 622.44(c).''

(4) For clarity, at 50 CFR 622.39(b)(1)(ii), NMFS is explicitly excluding Nassau grouper from the bag limit for groupers, combined, applicable to the fishery for reef fish in the Gulf of Mexico. As specified at 50 CFR 622.32(b)(2)(iii), a Nassau grouper in or from the Gulf of Mexico exclusive economic zone (EEZ) is a prohibited species. As such, a Nassau grouper may not be harvested or possessed in or from the Gulf EEZ and, if caught in the Gulf EEZ, must be released immediately with a minimum of harm. Accordingly, the exclusion of Nassau grouper from the bag limit is not a substantive change in the regulations.

Classification

The Regional Administrator, Southeast Region, NMFS, with the concurrence of the Assistant Administrator for Fisheries, NOAA (AA), determined that the approved measures of Amendment 15 are necessary for the conservation and management of the reef fish fishery of the Gulf of Mexico and that, with the exception of the measure that was not approved, Amendment 15 is consistent with the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared a final regulatory flexibility analysis (FRFA). The FRFA concludes that a significant economic impact on a substantial number of small entities will result from implementation of Amendment 15. A summary of the FRFA follows.

The need for this rule is based on several problems that provided the basis for Amendment 15. The first is that the existing endorsement system for commercial red snapper fishermen needs to be replaced with management that complies with recent Congressional action and also achieves the FMP's objectives.

Other fishery problems include the use by some persons of blue crab traps to target reef fish in the EEZ off the Big Bend area of Florida, the overfishing of vermilion snapper under an 8–inch (20.3–cm) minimum size limit, a need to address the Council's concern that Florida's management of sea basses, grunts, and porgies would be more effective than Federal management, concerns about declines in the greater amberjack abundance and inequitable sharing of the burden of stock rebuilding between the recreational and commercial sectors, and the need to remove certain species not in the management unit from the aggregate bag limit to relieve unintended burdens of limiting species commonly used for bait. NMFS found that overfishing problems would exist with the proposed removal of hogfish and queen triggerfish from the aggregate bag limit.

The following summarizes issues raised by public comments, summarizes the agency's response to such issues, and describes any changes made in the proposed rule as a result of such comments:

A number of public comments addressed negative economic impacts that the commenters felt would occur as a result of implementing the red snapper license limitation program and associated fishing season provisions. The comments generally indicated that those measures would not resolve existing problems of excessive harvest capacity, derby fishing, vessel safety, lowered prices for red snapper, and a high level of bycatch mortality. Several commenters favored a three-tier red snapper license limitation system rather than a two-tier system. However, such a system would provide highliners with unjust economic benefits. NMFS considered these comments and has approved these measures to provide net economic benefits (compared to status quo).

Other comments opposed the greater amberjack provision as unnecessary and inconsistent with recent stock assessment information. The Council and NMFS disagree with these comments and have approved this measure, for the reasons previously stated.

A commenter opposed removal of sea basses, grunts, and porgies from the FMP, which he felt prevents timely implementation of appropriate Federal management measures. NMFS reviewed this issue and determined that Florida intends to implement measures in a timely manner that would be more effective than the Federal management regime. The interim period (after sea basses, grunts, and porgies are removed from the FMP, and prior to Florida's management of those species) is expected to be of very short duration and, therefore, should not adversely impact the status of these species.

Two other comments support disapproval of the provision for removal of hogfish and queen triggerfish from the aggregate bag limit. This disapproval was recommended to prevent reported overfishing. The Initial Regulatory Flexibility Analysis (IRFA) and Regulatory Impact Review (RIR) did not address this issue.

Several comments also support removal of the sand perch species from the bag limit. NMFS agrees with the public comments and similar concerns expressed by the SEFSC. It has approved the removal of dwarf sand perch and sand perch from the aggregate bag limit and disapproved the removal of hogfish and queen triggerfish from that measure.

Approximately 1,424 commercial reef fish permit holders are active in the fishery. All of these are expected to be affected to some degree by each measure in the final rule. The average small business entity operates with a fishing vessel that has a length of 38 ft (11.6 m), has a current estimated resale value of $52,817, provides $52,000 in annual gross sales of reef fish and other species, and produces an annual net income of $12,000. Additionally, an estimated 838 small entities that operate charter vessel businesses and an additional 92 headboat operations will be affected by portions of the rule.

The public burden of compliance associated with all aspects of this rule is estimated to cost the industry $35,000 annually, but only a very small portion of this amount would be associated with changed reporting and recordkeeping requirements. No additional professional skills are required to comply with the final rule.

Several alternatives were considered as ways to meet the FMP objectives. With respect to the license limitation program, the status quo (i.e., no license management system in 1998) is not considered a viable alternative since that would clearly result in major adverse economic impacts on fishery participants. The Council considered various provisions to establish and maintain the license limitation system. The Council rejected between one to ten alternatives for each preferred alternative under these provisions. The general finding of the IRFA and RIR was that, while some of the implementation alternatives would differ slightly in terms of overall changes in economic impacts, the distribution of impacts would vary in all cases. However, regarding the red snapper fishing seasons, the Council considered information that two rejected alternatives were deemed superior, in terms of economic impacts. Both of these rejected alternatives would have provided one continuous commercial red snapper monthly period, as opposed to the 15-day monthly seasons proposed in Amendment 15. The Council selected, and NMFS approved, the 15-day seasons to provide an interval between open periods for vessel repair and preventive maintenance and, thereby, enhance safety.

The Council rejected two alternatives to the proposal to prohibit the possession of reef fish in excess of the bag limit that were harvested in a trap other than a fish, stone crab, or spiny lobster trap. One of these alternatives would have specified an allowable commercial catch of reef fish as a percentage of the other target species on board. The other rejected alternative is status quo. Both of these alternatives were rejected on the basis that neither one resolves the problem described in Amendment 15.

Regarding the vermilion snapper minimum size limit (currently 10 inches (25.4 cm) by interim rule), the alternative 8–inch (20.3–cm) size limit was determined to allow further overfishing and, therefore, was rejected. Another rejected alternative proposed a 12–inch (30.5–cm) size limit. This was rejected based on the substantial revenue reduction on both the commercial vessels and for-hire vessels which could lose as much as 25 percent and 69 percent in landings.

The Council considered only status quo as an alternative to removing sea basses, grunts, and porgies from Federal management. The Council rejected status quo on the basis that Florida could provide more effective management of those species.

In regards to the greater amberjack harvest restriction, both rejected alternatives were less restrictive and would have less adverse short-term economic impacts on fishing participants. The Council rejected those alternatives as not sufficiently reducing fishing mortality or ensuring that the commercial harvest does not reverse the stock rebuilding from the recent bag limit reduction.

The rejected alternatives regarding the exclusion of species from the aggregate bag limit include the status quo (no revision to the list of species subject to the aggregate bag limit). Status quo was rejected because it would not resolve the unintended consequences of that limit. In addition, a rejected alternative specified that either (1) pinfish and sand

perch be removed from the aggregate bag limit, or (2) pinfish and sand perch be removed, but the removal of other species be subject to review by the Reef Fish Stock Assessment Panel. Amendment 15 indicates that this alternative would have roughly the same impact as the proposed measure. NMFS has determined that removing hogfish and queen triggerfish from the aggregate bag limit would have provided short-term revenue increases for a number of persons who reportedly would then harvest larger quantities of those species. However, NMFS believes that the removal of hogfish and queen triggerfish from the aggregate bag limit could lead to overfishing followed by a relatively larger decline in net economic benefits.

Copies of the FRFA are available (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule contains two new, one-time collection-of-information requirements subject to the PRA—namely, the submission of copies of agreements whereby the seller and purchaser of a vessel agreed that a vessel's record of landings would not be transferred to the purchaser and the submission of requests for reconsideration of the Regional Administrator's initial determination of eligibility for historical captain status or a Class 2 red snapper license. These collections of information have been approved by OMB under OMB control number 0648–0336. The public reporting burdens for these collections of information are estimated at 15 and 45 minutes per response, respectively, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. This rule continues in effect the collection-of-information requirement associated with the transfer or renewal of commercial red snapper endorsements, which would be applied to commercial red snapper licenses under Amendment 15. This collection of information is currently approved under OMB control number 0648–0205. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

The technical amendments in this rule, discussed under Changes From the Proposed Rule, correct and clarify the regulations and do not require any changes in fishing practices. Accordingly, the AA, under 5 U.S.C. 553(b)(B), for good cause, finds that providing prior notice and an opportunity for public comment on the technical amendments are unnecessary in that they would serve no useful purpose.

The current seasonal closures and trip limits applicable to the commercial fishery for red snapper expire December 31, 1997. Unless replaced in a timely manner, the commercial fishery would open on January 1, 1998, without trip limits, thus subverting the intended effects of the new seasonal closures and trip limits, as discussed in Amendment 15 and in the preamble to the proposed rule. Under 5 U.S.C. 553(d)(3), the AA, for good cause, finds that it would be contrary to the public interest to delay for the full 30 days the effective date of § 622.34(l), which closes the commercial fishery for red snapper from January 1 to noon on February 1. Accordingly, § 622.34(l) is effective January 1, 1998.

As explained in Amendment 15 and in the preamble to the proposed rule, the commercial red snapper license and trip limit system will replace the current endorsement and trip limit system, which expires December 31, 1997. Implementation of the new system before the commercial fishery opens at noon on February 1, 1998, requires initiation of the application process for red snapper licenses as soon as possible. The procedures for initial implementation of the license system are at § 622.4(p). Directly related to initial implementation are the fees for applying for a commercial red snapper license and the prohibition on falsifying information on an application at § 622.4(d) and § 622.7(b), respectively, and the OMB control numbers for the two new, one-time collection-of-information requirements contained in 15 CFR 902.1(b). These sections authorize NMFS to administratively implement the commercial red snapper license and trip limit system. The regulations allow submission of information regarding the retention of landings records through January 30, 1998, and a request for reconsideration of an initial eligibility determination through February 10, 1998, thus providing at least 30 days before submissions are required. Under 5 U.S.C. 553(d)(3), the AA, for good cause, finds that it would be unnecessary and contrary to the public interest to delay for 30 days the effective date of §§ 622.4(d) and (p), 622.7(b), and 15 CFR 902.1(b). Accordingly, these paragraphs and the amendments to 15 CFR 902.1(b) are effective December 30, 1997. To aid owners, operators, and historical captains in obtaining red snapper licenses prior to February 1, 1998, NMFS has already made its initial determinations of eligibility for initial red snapper licenses, based on NMFS' records, and has advised owners, operators, and potential historical captains of such determinations, as specified at § 622.4(p)(6)(i).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: December 22, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902 and 50 CFR part 622 are amended as follows:

15 CFR Chapter IX

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

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

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

2. Effective December 30, 1997, in § 902.1, paragraph (b) table, under 50 CFR, the entries for ''622.4'', ''622.10'', and ''641.4'' are removed, and the following entries are added in numerical order to read as follows:

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

* * * * *

(b) * * *

CFR part or section where the Current OMB control information collection number (all numbers requirement is located begin with 0648–)

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50 CFR

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622.4 –0205 and –0336

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622.8 –0205

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50 CFR Chapter VI

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

3. The authority citation for part 622 continues to read as follows:

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

4. Effective December 30, 1997, in § 622.4, paragraphs (d) and (p) are revised to read as follows:

§ 622.4 Permits and fees.

* * * * *

(d) *Fees*. A fee is charged for each application for a permit, license, or endorsement submitted under this section, for each request for transfer or replacement of such permit, license, or endorsement, and for each fish trap or sea bass pot identification tag required under § 622.6(b)(1)(i). The amount of each fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the RD, for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application, request for transfer or replacement, or request for fish trap/sea bass pot identification tags.

* * * * *

(p) *Gulf red snapper licenses*—(1) *Class 1 licenses*. To be eligible for the 2,000–lb (907–kg) trip limit for Gulf red snapper specified in § 622.44(e)(1), a vessel must have been issued both a valid commercial vessel permit for Gulf reef fish and a valid Class 1 Gulf red snapper license, and such permit and license must be on board.

(2) *Class 2 licenses*. To be eligible for the 200–lb (91–kg) trip limit for Gulf red snapper specified in § 622.44(e)(2), a vessel must have been issued both a valid commercial vessel permit for Gulf reef fish and a valid Class 2 Gulf red snapper license, and such permit and license must be on board.

(3) *Operator restriction*. An initial Gulf red snapper license that is issued for a vessel based on the qualification of an operator or historical captain is valid only when that operator or historical captain is the operator of the vessel. When applicable, this operator restriction is shown on the license.

(4) *Transfer of Gulf red snapper licenses*. A red snapper license may be transferred independently of a commercial vessel permit for Gulf reef fish. To request the transfer of a red snapper license, complete the transfer information on the reverse of the license and return it to the RD.

(5) *Initial issue of Gulf red snapper licenses*—(i) *Class 1 licenses*. (A) An initial Class 1 license will be issued for the vessel specified by the holder of a valid red snapper endorsement on March 1, 1997, and to a historical captain. In the event of death or disability of such holder between March 1, 1997, and the date Class 1 licenses are issued, a Class 1 license will be issued for the vessel specified by the person to whom the red snapper endorsement was transferred.

(B) Status as a historical captain is based on information collected under Amendment 9 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) (59 FR 39301, August 2, 1994). A historical captain is an operator who—

(*1*) From November 6, 1989, through 1993, fished solely under verbal or written share agreements with an owner, and such agreements provided for the operator to be responsible for hiring the crew, who was paid from the share under his or her control;

(*2*) Landed from that vessel at least 5,000 lb (2,268 kg) of red snapper per year in 2 of the 3 years 1990, 1991, and 1992;

(*3*) Derived more than 50 percent of his or her earned income from commercial fishing, that is, sale of the catch, in each of the years 1989 through 1993; and

(*4*) Landed red snapper prior to November 7, 1989.

(ii) *Class 2 licenses*. (A) An initial Class 2 license will be issued for the vessel specified by an owner or operator whose income qualified for a commercial vessel permit for reef fish that was valid on March 1, 1997, and such owner or operator was the person whose earned income qualified for a commercial vessel permit for reef fish that had a landing of red snapper during the period from January 1, 1990, through February 28, 1997.

(B) For the purpose of paragraph (p)(5)(ii)(A) of this section, landings of red snapper are as recorded in the information collected under Amendment 9 to the FMP (59 FR 39301, August 2, 1994) for the period 1990 through 1992 and in fishing vessel logbooks, as required under § 622.5(a)(1)(ii), received by the SRD not later than March 31, 1997, for the period from January 1, 1993, through February 28, 1997.

(C) A vessel's red snapper landings record during the period from January 1, 1990, through February 28, 1997, is retained by the owner at the time of the landings if the vessel's permit was transferred to another vessel owned by him or her. When a vessel has had a change of ownership and concurrent transfer of its permit, the vessel's red snapper landings record is credited to the owner of that vessel on March 1, 1997, unless there is a legally binding agreement under which a previous owner retained the landings record. An owner who claims such retention of a landings record must submit a copy of the agreement to the RD postmarked or hand delivered not later than January 30, 1998. However, an owner who submits a copy of such agreement after January 6, 1998, is not assured that a red snapper license will be issued before the opening of the commercial fishery for red snapper on February 1, 1998.

(6) *Implementation procedures*—(i) *Initial notification*. The RD will notify each owner of a vessel that had a valid permit for Gulf reef fish on March 1, 1997, each operator whose earned income qualified for a valid permit on that date, and each potential historical captain of his or her eligibility for a Class 1 or Class 2 red snapper license. Initial determinations of eligibility will be based on NMFS' records of red snapper endorsements, red snapper landings during the period from January 1, 1990, through February 28, 1997, and applications for historical captain status under Amendment 9 to the FMP (59 FR 39301, August 2, 1994). An owner, operator, or potential historical captain who concurs with NMFS' initial determination of eligibility need take no further action. Each owner, operator, and historical captain who is initially determined to be eligible will be issued an appropriate license not later than January 23, 1998.

(ii) *Reconsideration*. (A) An owner, operator, or potential historical captain who does not concur with NMFS' initial determination of eligibility for historical captain status or for a Class 2 red snapper license may request reconsideration of that initial determination by the RD.

(B) A written request for reconsideration must be submitted to the RD postmarked or hand delivered not later than February 10, 1998, and must provide written documentation supporting the basis for reconsideration. However, an owner who submits such request after January 13, 1998, is not assured that a red snapper license will be issued before the opening of the commercial fishery for red snapper on February 1, 1998. Upon request by the owner, operator, or potential historical captain, the RD will forward the initial determination, the request for reconsideration, and pertinent records to a committee consisting of the principal state officials who are members of the GMFMC, or their

designees. An owner, operator, or potential historical captain may request to make a personal appearance before the committee in his or her request for reconsideration. If an owner, operator, or potential historical captain requests that his or her request be forwarded to the committee, such a request constitutes the applicant's written authorization under section 402(b)(1)(F) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) for the RD to make available to the committee members such confidential catch and other records as are pertinent to the matter under reconsideration.

(C) Members of the committee will provide their individual recommendations for each application for reconsideration referred to the committee to the RD. The committee may only deliberate whether the eligibility criteria specified in paragraph (p)(5) of this section were applied correctly in the applicant's case, based solely on the available record, including documentation submitted by the applicant. Neither the committee nor the RD may consider whether a person should have been eligible for historical captain status or a Class 2 license because of hardship or other factors. The RD will make a final decision based on the initial eligibility criteria in paragraph (p)(5) of this section and the available record, including documentation submitted by the applicant, and, if the request is considered by the committee, the recommendations and comments from each member of the committee. The RD will notify the applicant of the decision and the reason therefore, in writing, within 15 days of receiving the recommendations of the committee members. If the application is not considered by the committee, the RD will provide such notification within 15 days of the RD's receipt of the request for reconsideration. The RD's decision will constitute the final administrative action by NMFS on an application for reconsideration.

5. Effective January 29, 1998, in § 622.4, paragraph (a) introductory text, paragraph (a)(2) heading, and paragraphs (a)(2)(ix), (g), and (i) through (l) are revised to read as follows:

§ 622.4 Permits and fees.

(a) *Permits required*. To conduct activities in fisheries governed in this part, valid permits, licenses, and endorsements are required as follows:

* * * * *

(2) *Commercial vessel permits, licenses, and endorsements.*

* * * * *

(ix) *Gulf red snapper*. For a person aboard a vessel for which a commercial vessel permit for Gulf reef fish has been issued to retain red snapper under the trip limits specified in § 622.44(e)(1) or (2), a Class 1 or Class 2 Gulf red snapper license must have been issued to the vessel and must be on board. See paragraph (p) of this section regarding initial issue of red snapper licenses.

* * * * *

(g) *Transfer*. A vessel permit, license, or endorsement or dealer permit issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish, paragraph (n) of this section for a fish trap endorsement, or paragraph (p) of this section for a red snapper license. A person who acquires a vessel or dealership who desires to conduct activities for which a permit, license, or endorsement is required must apply for such permit, license, or endorsement in accordance with the provisions of this section. If the acquired vessel or dealership is currently permitted, the application must be accompanied by the original permit and a copy of a signed bill of sale or equivalent acquisition papers.

* * * * *

(i) *Display*. A vessel permit, license, or endorsement issued under this section must be carried on board the vessel. A dealer permit issued under this section, or a copy thereof, must be available on the dealer's premises. In addition, a copy of the dealer's permit must accompany each vehicle that is used to pick up from a fishing vessel reef fish harvested from the Gulf EEZ. The operator of a vessel must present the permit, license, or endorsement for inspection upon the request of an authorized officer. A dealer or a vehicle operator must present the permit or a copy for inspection upon the request of an authorized officer.

(j) *Sanctions and denials*. A permit, license, or endorsement issued pursuant to this section may be revoked, suspended, or modified, and a permit, license, or endorsement application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(k) *Alteration*. A permit, license, or endorsement that is altered, erased, or mutilated is invalid.

(l) *Replacement*. A replacement permit, license, or endorsement may be issued. An application for a replacement permit, license, or endorsement is not considered a new application.

* * * * *

6. Effective December 30, 1997, in § 622.7, paragraph (b) is revised to read as follows:

§ 622.7 Prohibitions.

* * * * *

(b) Falsify information on an application for a permit, license, or endorsement or submitted in support of such application, as specified in § 622.4(b), (g), or (p) or § 622.17.

* * * * *

7. Effective January 29, 1998, in § 622.7, paragraphs (a) and (c) are revised to read as follows:

§ 622.7 Prohibitions.

* * * * *

(a) Engage in an activity for which a valid Federal permit, license, or endorsement is required under § 622.4 or § 622.17 without such permit, license, or endorsement.

* * * * *

(c) Fail to display a permit, license, or endorsement, as specified in § 622.4(i) or § 622.17(g).

* * * * *

8. Effective January 1, 1998, in § 622.34, paragraph (l) is revised to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(l) *Closures of the commercial fishery for red snapper*. The commercial fishery for red snapper in or from the Gulf EEZ is closed from January 1 to noon on February 1 and thereafter from noon on the 15th of each month to noon on the first of each succeeding month. All times are local times. During these closed periods, the possession of red snapper in or from the Gulf EEZ and in the Gulf on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), without regard to where such red snapper were harvested, is limited to the bag and possession limits, as specified in § 622.39(b)(1)(iii) and (b)(2), respectively, and such red snapper are subject to the prohibition on sale or purchase of red snapper possessed under the bag limit, as specified in § 622.45(c)(1). However, when the recreational quota for red snapper has been reached and the bag and possession limit has been reduced to zero, such possession during a closed period is zero.

9. Effective January 29, 1998, in § 622.34, in the last sentence of paragraph (c), the phrase ''and shown in Figures 1 and 2'' is removed; in

paragraph (g) introductory text, the phrase ''and shown in Figures 3 and 4'' is removed; and a sentence is added to the end of paragraph (g)(1) to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(g) * * *

(1) * * * The provisions of this paragraph do not apply to the following species: dwarf sand perch, hogfish, queen triggerfish, and sand perch.

* * * * *

10. Effective January 29, 1998, in § 622.36, the introductory text and paragraphs (a), (b), and (c) are redesignated as paragraphs (b) introductory text, (b)(1), (b)(2), and (b)(3), respectively, and paragraph (a) is added to read as follows:

§ 622.36 Seasonal harvest limitations.

(a) During March, April, and May, each year, the possession of greater amberjack in or from the Gulf EEZ and in the Gulf on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), without regard to where such greater amberjack were harvested, is limited to the bag and possession limits, as specified in § 622.39(b)(1)(i) and (b)(2), respectively, and such greater amberjack are subject to the prohibition on sale or purchase of greater amberjack possessed under the bag limit, as specified in § 622.45(c)(1).

* * * * *

11. Effective January 29, 1998, in § 622.39, paragraph (a)(2) introductory text is republished, paragraph (a)(2)(iv) is added, and paragraphs (b)(1)(ii) and (v) are revised to read as follows:

§ 622.39 Bag and possession limits.

(a) * * *

(2) Paragraph (a)(1) of this section notwithstanding, bag and possession limits also apply for Gulf reef fish in or from the EEZ to a person aboard a vessel that has on board a commercial permit for Gulf reef fish—

* * * * *

(iv) When the vessel has on board or is tending any trap other than a fish trap authorized under § 622.40(a)(2), a stone crab trap, or a spiny lobster trap.

(b) * * *

(1) * * *

(ii) Groupers, combined, excluding jewfish and Nassau grouper—5.

* * * * *

(v) Gulf reef fish, combined, excluding those specified in paragraphs (b)(1)(i) through (iv) of this section and excluding dwarf sand perch and sand perch—20.

* * * * *

12. Effective January 29, 1998, in § 622.42, paragraph (a)(1)(i) is revised to read as follows:

§ 622.42 Quotas.

* * * * *

(a) * * *

(1) * * *

(i) Red snapper—4.65 million lb (2.11 million kg), round weight, apportioned as follows:

(A) 3.06 million lb (1.39 million kg) available at noon on February 1 each year, subject to the closure provisions of §§ 622.34(l) and 622.43(a)(1)(i).

(B) The remainder available at noon on September 1 each year, subject to the closure provisions of §§ 622.34(l) and 622.43(a)(1)(i).

* * * * *

§ 622.43 [Amended]

13. Effective January 29, 1998, in § 622.43(a)(5), the reference to ''§ 622.44(a)'' is removed and ''§ 622.44(c)'' is added in its place.

14. Effective January 29, 1998, in § 622.44, paragraph (e) is revised to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(e) *Gulf red snapper.* (1) The trip limit for red snapper in or from the Gulf for a vessel that has on board a valid commercial permit for Gulf reef fish and a valid Class 1 red snapper license is 2,000 lb (907 kg), round or eviscerated weight.

(2) The trip limit for red snapper in or from the Gulf for a vessel that has on board a valid commercial permit for Gulf reef fish and a valid Class 2 red snapper license is 200 lb (91 kg), round or eviscerated weight.

(3) The trip limit for red snapper in or from the Gulf for any other vessel for which a commercial permit for Gulf reef fish has been issued is zero.

(4) As a condition of a commercial vessel permit for Gulf reef fish, as required under § 622.4(a)(2)(v), without regard to where red snapper are harvested or possessed, a vessel that has been issued such permit—

(i) May not possess red snapper in or from the Gulf in excess of the appropriate vessel trip limit, as specified in paragraphs (e)(1) through (3) of this section.

(ii) May not transfer or receive at sea red snapper in or from the Gulf.

* * * * *

Appendix A to Part 622 [Amended]

15. Effective January 29, 1998, in Table 3 of Appendix A to part 622, the family Haemulidae—Grunts and the three species and scientific names thereunder are removed; under the family Serranidae, the species Bank sea bass, Rock sea bass, and Black sea bass and their scientific names are removed and the family name is revised to read Serranidae—Groupers; and the family Sparidae—Porgies and the six species and scientific names thereunder are removed.

[FR Doc. 97–33887 Filed 12–24–97; 10:06 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 970103001–7001–01]

RIN 0648–XX79

Point Reyes/Farallon Islands National Marine Sanctuary

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 (DOC).

ACTION: Correction to final regulation.

SUMMARY: This document contains a correction to the final regulation which was published on January 27, 1997 (62 FR 3788). That regulation changed the name of the Point Reyes/Farallon Islands National Marine Sanctuary to the Gulf of the Farallones National Marine Sanctuary. This document corrects the January 27, 1997 final regulation by instructing that all uses of the acronym ''PRNMS'' are changed to ''GFNMS'' within part 922 of title 15 of the Code of Federal Regulations.

EFFECTIVE DATE: December 30, 1997.

FOR FURTHER INFORMATION CONTACT: Elizabeth Moore at (301) 713–3141.

SUPPLEMENTARY INFORMATION: The name of the Point Reyes/Farallon Islands National Marine Sanctuary (PRNMS) was changed to the Gulf of the Farallones National Marine Sanctuary (GFNMS) on January 27, 1997 (62 FR 3788). Regulations for the GFNMS are found in part 922 of title 15 of the Code of Federal Regulations. In the January 27, 1997 final regulations, NOAA overlooked the need to also replace the acronym ''PRNMS'' with ''GFNMS'' throughout Part 922. This document corrects the January 27, 1997 final regulation by officially replacing

''PRNMS'' with ''GFNMS'' throughout part 922.

Correction of Publication

Accordingly, the **Federal Register** document published on January 27, 1997 (62 FR 3788) is corrected by adding amendatory instruction 3 to read as follows:

''3. Part 922 is amended by deleting ''PRNMS'' wherever it appears and replacing it with ''GFNMS''.

Authority: 16 U.S.C. § 1431 *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: December 18, 1997.

Nancy Foster,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 97–33886 Filed 12–29–97; 8:45 am]

BILLING CODE 3510–08–M

RAILROAD RETIREMENT BOARD

20 CFR Part 295

RIN 3220–AB29

Payments Pursuant to Court Decree or Court-Approved Property Settlement

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board hereby amends its regulations under part 295 by eliminating the Medicare Part B premium as a deduction from the amount of benefits available for division in a divorce proceeding or property settlement related to a divorce or legal separation.

EFFECTIVE DATE: This regulation shall be effective January 29, 1998.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Senior Attorney, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, telephone (312) 751–4513, TTD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Part 295 describes the Board's requirements for obtaining an enforceable order directing the Board to partition a railroad retirement annuity incident to a divorce, settlement, or annulment. Section 295.1(b) describes what benefits are subject to division under this part. Section 295.5(e)(1) further defines the net amount of benefits subject to division as excluding amounts deducted for an employee's elected Medicare Part B premium. When section 295.5(e)(1) was initially approved in 1986, the Board was concerned about the risk that Medicare premium deductions might not be satisfied from the nondivisible portion of an employee's annuity in the event that the portion would not be payable due to work deductions. In practice, however, the agency has determined that only in rare cases is the nondivisible portion insufficient to accommodate the Medicare Part B deduction. The Medicare Part B premium is a personal expense elected to be made by the employee. The Board believes that it is more consistent with the nature of the Part B premium that it be paid entirely by the employee rather than, in effect, partly by the employee and partly by the divorced spouse. Accordingly, the agency is revising part 295 to remove the Medicare Part B premium as a deduction from divisible benefits prior to partition in an action for divorce, settlement, or annulment.

The Board published this regulation as a proposed rule on July 31, 1997 (62 FR 40995) and invited comments by September 29, 1997. No comments were received.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866; therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 295

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, chapter II of title 20 of the Code of Federal Regulations is amended as follows:

PART 295—PAYMENTS PURSUANT TO COURT DECREE OR COURT-APPROVED PROPERTY SETTLEMENT

1. The authority for part 295 continues to read as follows:

Authority: 45 U.S.C. 231f; 45 U.S.C. 231m.

§ 295.5 [Amended]

2. Section 295.5(e)(1) is amended by removing the comma after ''Board'' and by removing ''and the amount of any Medicare Part B premium''.

Dated: December 16, 1997.

By authority of the Board.

For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 97–33808 Filed 12–29–97; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs And Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for seven new animal drug applications (NADA's) from Rhone-Poulenc, Inc., to Alpharma Inc.

EFFECTIVE DATE: December 30, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Rhone-Poulenc, Inc., P.O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08852, has informed FDA that it has transferred ownership of, and all rights and interests in, the following approved NADA's to Alpharma Inc., One Executive Dr., Fort Lee, NJ 07024:

NADA	Ingredient
039–417	Decoquinate
040–435	Decoquinate, roxarsone
045–348	Decoquinate, zinc bacitracin
045–444	Decoquinate, chlortetracycline
047–262	Decoquinate, lincomycin
091–326	Decoquinate, roxarsone, zinc bacitracin
092–953	Roxarsone

The agency is amending 21 CFR part 558 to reflect the change of sponsor.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: (21 U.S.C. 360b, 371).

§ 558.195 [Amended]

2. Section 558.195 *Decoquinate* is amended in paragraph (a) by removing ''011526'' and adding in its place ''046573'' and in the table in paragraph (d), under the ''sponsor column'' by removing ''011526'' wherever it appears and adding in its place ''046573''.

§ 558.530 [Amended]

3. Section 558.530 *Roxarsone* is amended in paragraph (a) by removing ''011526'' and adding in its place ''046573''.

Dated: December 18, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 97–33920 Filed 12–29–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Chlortetracycline, Sulfathiazole, Penicillin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Hoffmann-La Roche, Inc. The ANADA provides for use of a fixed combination Type A medicated article containing chlortetracycline, sulfathiazole, and penicillin to make a Type C medicated swine feed.

EFFECTIVE DATE: December 30, 1997.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: Hoffmann-La Roche, Inc., 340 Kingsland St., Nutley, NJ 07110–1199, filed ANADA 200–140 that provides for using a fixed combination Type A medicated article containing chlortetracycline calcium complex equivalent to 20 grams per pound (g/lb) chlortetracycline hydrochloride, 4.4 percent sulfathiazole (20 g/lb), and penicillin procaine equivalent to 10 g/lb penicillin to make a Type C medicated swine feed. The Type C swine medicated feed contains 100 g/ton (t) chlortetracycline, 100 g/t sulfathiazole, and 50 g/t penicillin, for making prestarter, starter, grower, and finisher Type C medicated feeds.

Hoffmann-La Roche's ANADA 200–140 is approved as a generic copy of Boehringer Ingelheim's NADA 39–077. The ANADA is approved as of December 30, 1997, and the regulations are amended in 21 CFR 558.155(a)(1) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of human food safety data and information submitted to support this approval may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.155 [Amended]

2. Section 558.155 *Chlortetracycline, sulfathiazole, penicillin* is amended in paragraph (a)(1) by removing ''000010'' and adding in its place ''000004 and 000010''.

Dated: December 19, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–33919 Filed 12–30–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8745]

RIN 1545–AR63

Definition of Structure

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to deductions available upon demolition of a building. These final regulations reflect changes to the law made by the Tax Reform Act of 1984 and affect owners and lessees of real property who demolish buildings.

DATES: The regulations are effective December 30, 1997.

FOR FURTHER INFORMATION CONTACT: Bernard P. Harvey, (202) 622–3110 (not a toll-free number). For dates of applicability of these regulations, see § 1.280B–1(c).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations under section 280B of the Internal Revenue Code. Section 280B was added by the Tax Reform Act of 1976, Public Law 94–455, 2124(b), 90 Stat. 1520, 1918 (Oct. 4, 1976), and significant amendments were made to the provision by the Economic Recovery Tax Act of 1981, Public Law 97–34, 212 (d)(2)(C) and (e)(2), 95 Stat. 172, 239 (Aug. 13, 1981) (1981 Act) and the Tax Reform Act of 1984, Public Law 98–369, 1063, 98 Stat. 494, 1047 (July 18, 1984) (1984 Act). Transition rules were provided in the Tax Reform Act of 1986, Public Law 99–514, 1878(h), 100 Stat. 2085, 2904 (Oct. 22, 1986) (1986 Act). As originally enacted, section 280B required any costs or losses incurred on account of the demolition of any certified historic structure (a building or structure meeting certain requirements) to be capitalized into the land upon

which the demolished structure was located. The 1981 Act modified the definition of certified historic structure for purposes of section 280B from a building or structure meeting certain requirements to a building (or its structural components) meeting certain requirements. The 1984 Act substituted ''any structure'' for ''certified historic structure.''

A notice of proposed rulemaking was published in the **Federal Register** (61 FR 31473) on June 20, 1996. The one written comment received supports the position announced in the notice of proposed rulemaking.

These final regulations define what ''structure'' means for purposes of section 280B.

Explanation of Provisions

These final regulations define the term ''structure'' for purposes of section 280B as a building and its structural components as those terms are defined in § 1.48–1(e) of the Income Tax Regulations. Thus, under section 280B, a structure will include only a building and its structural components and not other inherently permanent structures such as oil and gas storage tanks, blast furnaces, and coke ovens.

The final regulations rely on the legislative history underlying the 1984 and 1986 Acts, which refer repeatedly to buildings rather than to structures generally. In addition, the legislative history of the 1984 Act discusses the difficulty of applying the intent test of § 1.165–3 of the regulations, which applies to the demolition of buildings, and indicates that the newly added language is meant to eliminate this difficulty.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of these regulations is Bernard P. Harvey, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.280B–1 is added to read as follows:

§ 1.280B–1 Demolition of structures.

(a) *In general.* Section 280B provides that, in the case of the demolition of any structure, no deduction otherwise allowable under chapter 1 of subtitle A shall be allowed to the owner or lessee of such structure for any amount expended for the demolition or any loss sustained on account of the demolition, and that the expenditure or loss shall be treated as properly chargeable to the capital account with respect to the land on which the demolished structure was located.

(b) *Definition of structure.* For purposes of section 280B, the term *structure* means a building, as defined in § 1.48–1(e)(1), including the structural components of that building, as defined in § 1.48–1(e)(2).

(c) *Effective date.* This section is effective for demolitions commencing on or after December 30, 1997.

Dated: December 8, 1997.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Approved:

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97–33646 Filed 12–29–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8747]

RIN 1545–AU30

Empowerment Zone Employment Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the period employers may use in computing the empowerment zone employment credit under section 1396 of the Internal Revenue Code. The regulations reflect and implement certain changes made by the Omnibus Budget Reconciliation Act of 1993 (OBRA '93). They affect employers of employees who live and work in an empowerment zone designated under the statute. The regulations provide employers with the guidance necessary to claim the credit.

DATES: These regulations are effective December 30, 1997. For dates of applicability, see § 1.1396–1(c) of these regulations.

FOR FURTHER INFORMATION CONTACT: Robert G. Wheeler, (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 16, 1996, a notice of proposed rulemaking [REG–209834–96] containing proposed regulations relating to the period employers may use in computing the empowerment zone employment credit under section 1396 of the Internal Revenue Code was published in the **Federal Register** (61 FR 66000).

No written comments responding to this notice were received. No one requested an opportunity to speak at a public hearing. Therefore, no public hearing was held. The regulations proposed by REG–209834–96 are adopted with minor clarifications by this Treasury decision.

Explanation of Provisions

This document contains amendments to the Income Tax Regulations (26 CFR part 1) relating to the empowerment zone employment credit under section 1396. Section 1396 was added to the Internal Revenue Code by the Omnibus Budget Reconciliation Act of 1993 (OBRA '93). Section 1397D of the Code authorizes the Secretary of the Treasury to prescribe regulations that may be

necessary or appropriate to carry out the purposes of section 1396.

Section 1396 provides employers with a credit for certain wages (qualified zone wages) paid or incurred by an employer for services performed by a qualified zone employee. The amount of the empowerment zone employment credit under section 1396 is equal to a specified percentage of the qualified zone wages paid or incurred by the employer during the calendar year that ends with or within the taxable year of the employer. Questions have arisen about the definition of a ''qualified zone employee'' in section 1396(d). In particular, questions have been raised about the appropriate period under section 1396(d)(1)(A) during which substantially all of the services performed by an employee for his or her employer must be performed within an empowerment zone in a trade or business of the employer.

Under the regulations, an employer may use either each pay period of the calendar year or the entire calendar year as the relevant period in determining whether a particular employee performed substantially all of his or her services within an empowerment zone (the ''location-of-services'' requirement). For each taxable year the employer must use the same method for all its employees, but the employer may change methods from one taxable year to the next. The description of the pay period method has been revised slightly to clarify that the relevant pay periods are those for the calendar year with respect to which the credit is being claimed (i.e., the calendar year ending with or within the employer's taxable year).

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of these regulations is Robert G. Wheeler, Office of Associate Chief Counsel, Employee Benefits and Exempt Organizations. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.1396–1 also issued under 26 U.S.C. 1397D.

Par. 2. A new undesignated center heading and § 1.1396–1 are added to read as follows:

Empowerment Zone Employment Credit

§ 1.1396–1 Qualified zone employees.

(a) *In general.* A qualified zone employee of an employer is an employee who satisfies the location-of-services requirement and the abode requirement with respect to the same empowerment zone and is not otherwise excluded by section 1396(d).

(1) *Location-of-services requirement.* The location-of-services requirement is satisfied if substantially all of the services performed by the employee for the employer are performed in the empowerment zone in a trade or business of the employer.

(2) *Abode requirement.* The abode requirement is satisfied if the employee's principal place of abode while performing those services is in the empowerment zone.

(b) *Period for applying location-of-services requirement.* In applying the location-of-services requirement, an employer may use either the pay period method described in paragraph (b)(1) of this section or the calendar year method described in paragraph (b)(2) of this section. For each taxable year of an employer, the employer must either use the pay period method with respect to all of its employees or use the calendar year method with respect to all of its employees. The employer may change the method applied to all of its employees from one taxable year to the next.

(1) *Pay period method*—(i) *Relevant period.* Under the pay period method, the relevant period for applying the location-of-services requirement is each pay period in which an employee provides services to the employer during the calendar year with respect to which the credit is being claimed (*i.e.*, the calendar year that ends with or within the relevant taxable year). If an employer has one pay period for certain employees and a different pay period for other employees (e.g., a weekly pay period for hourly wage employees and a bi-weekly pay period for salaried employees), the pay period actually applicable to a particular employee is the relevant pay period for that employee under this method.

(ii) *Application of method.* Under this method, an employee does not satisfy the location-of-services requirement during a pay period unless substantially all of the services performed by the employee for the employer during that pay period are performed within the empowerment zone in a trade or business of the employer.

(2) *Calendar year method*—(i) *Relevant period.* Under the calendar year method, the relevant period for an employee is the entire calendar year with respect to which the credit is being claimed. However, for any employee who is employed by the employer for less than the entire calendar year, the relevant period is the portion of that calendar year during which the employee is employed by the employer.

(ii) *Application of method.* Under this method, an employee does not satisfy the location-of-services requirement during any part of a calendar year unless substantially all of the services performed by the employee for the employer during that calendar year (or, if the employee is employed by the employer for less than the entire calendar year, the portion of that calendar year during which the employee is employed by the employer) are performed within the empowerment zone in a trade or business of the employer.

(3) *Examples.* This paragraph (b) may be illustrated by the following examples. In each example, the following assumptions apply. The employees satisfy the abode requirement at all relevant times and all services performed by the employees for their employer are performed in a trade or business of the employer. The employees are not precluded from being qualified zone employees by section 1396(d)(2) (certain employees ineligible). No portion of the employees' wages is precluded from being qualified zone wages by section 1396(c)(2) (only first $15,000 of wages taken into account) or section 1396(c)(3) (coordination with targeted jobs credit and work opportunity credit). The examples are as follows:

Example 1. (i) Employer X has a weekly pay period for all its employees. Employee A works for X throughout 1997. During each of the first 20 weekly pay periods in 1997, substantially all of A's work for X is performed within the empowerment zone in which A resides. A also works in the zone at various times during the rest of the year, but there is no other pay period in which substantially all of A's work for X is performed within the empowerment zone. Employer X uses the pay period method.

(ii) For each of the first 20 pay periods of 1997, A is a qualified zone employee, all of A's wages from X are qualified zone wages, and X may claim the empowerment zone employment credit with respect to those wages. X cannot claim the credit with respect to any of A's wages for the rest of 1997.

Example 2. (i) Employer Y has a weekly pay period for its factory workers and a bi-weekly pay period for its office workers. Employee B works for Y in various factories and Employee C works for Y in various offices. Employer Y uses the pay period method.

(ii) Y must use B's weekly pay periods to determine the periods (if any) in which B is a qualified zone employee. Y may claim the empowerment zone employment credit with respect to B's wages only for the weekly pay periods for which B is a qualified zone employee, because those are B's only wages that are qualified zone wages. Y must use C's bi-weekly pay periods to determine the periods (if any) in which C is a qualified zone employee. Y may claim the credit with respect to C's wages only for the bi-weekly pay periods for which C is a qualified zone employee, because those are C's only wages that are qualified zone wages.

Example 3. (i) Employees D and E work for Employer Z throughout 1997. Although some of D's work for Z in 1997 is performed outside the empowerment zone in which D resides, substantially all of it is performed within that empowerment zone. E's work for Z is performed within the empowerment zone in which E resides for several weeks of 1997 but outside the zone for the rest of the year so that, viewed on an annual basis, E's work is not substantially all performed within the empowerment zone. Employer Z uses the calendar year method.

(ii) D is a qualified zone employee for the entire year, all of D's 1997 wages from Z are qualified zone wages, and Z may claim the empowerment zone employment credit with respect to all of those wages, including the portion attributable to work outside the zone. Under the calendar year method, E is not a qualified zone employee for any part of 1997, none of E's 1997 wages are qualified zone wages, and Z cannot claim any empowerment zone employment credit with respect to E's wages for 1997. Z cannot use the calendar year method for D and the pay period method for E because Z must use the same method for all employees. For 1998, however, Z can switch to the pay period method for E if Z also switches to the pay period method for D and all of Z's other employees.

(c) *Effective date.* This section applies with respect to wages paid or incurred on or after December 21, 1994.

Dated: December 11, 1997.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Approved:

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97–33645 Filed 12–29–97; 8:45 am]

BILLING CODE 4830–01–U

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Chapters XXVI and XL

RIN 1212–AA75

Finding Aids; Terminology; Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Correction.

SUMMARY: On July 1, 1996, the Pension Benefit Guaranty Corporation published in the **Federal Register** (at 61 FR 34001, FR Doc. 96–16398) a final rule reorganizing, renumbering, and reinventing its regulations. This document contains corrections to 29 CFR Parts 4000, 4001, 4022, and 4044 as so published.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Marc L. Jordan, Attorney, Office of the General Counsel, Suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (For TTY/TDD, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: As published, 29 CFR Parts 4000, 4001, 4022, and 4044 contain errors that call for correction. This document corrects those errors.

List of Subjects in 29 CFR Chapter XL

Part 4000

Administrative practice and procedure, Authority delegations (Government agencies), Blind, Business and industry, Civil rights, Claims, Conflict of interests, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Freedom of information, Government employees, Handicapped, Nondiscrimination, Organization and functions (Government agencies), Penalties, Pension insurance, Pensions, Physically handicapped, Political activities (Government employees), Privacy, Production and disclosure of information, Reporting and recordkeeping requirements, Small businesses, Testimony.

Parts 4022 and 4041

Pension insurance, Pensions, Reporting and recordkeeping requirements.

Parts 4044

Pension insurance, Pensions.

Accordingly, 29 CFR Parts 4000, 4001, 4022, and 4044 are corrected as follows:

PART 4000—FINDING AIDS

1. The authority citation for Part 4000 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3).

§ 4000.1 [Corrected]

2. In § 4000.1, in the table headed ''Subchapter C—Single-Employer Plans'', the reference to ''§ 2621.23(b)'' is corrected to read ''§ 2621.3(b)''.

§ 4000.2 [Corrected]

3. In § 4000.2, in the table headed ''Subchapter D—Coverage and Benefits'', the reference to ''§ 2621.23(b)'' is corrected to read ''§ 2621.3(b)''.

PART 4001—TERMINOLOGY

4. The authority citation for Part 4001 continues to read as follows:

Authority: 29 U.S.C. 1301, 1302(b)(3).

§ 4000.2 [Corrected]

5. In § 4001.2, the definition of ''Basic-type benefit'' is corrected to read as follows:

Basic-type benefit means a benefit that is guaranteed under part 4022 of this chapter or that would be guaranteed if the guarantee limits in §§ 4022.22 through 4022.27 of this chapter did not apply.

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

6. The authority citation for Part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322B, 1341(c)(3)(D), and 1344.

§ 4022.1 [Corrected]

7. In § 4022.1, the second sentence is corrected by removing the term, ''basic-type''.

§ 4022.24 [Corrected]

8. In § 4022.24(e), the words ''this subpart'' are corrected to read ''§§ 4022.22 through 4022.27''.

§ 4022.26 [Corrected]

9. In § 4022.26(a), the words ''subpart A'' are corrected to read ''subpart A (subject to the limitations in § 4022.21)''.

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

10. The authority citation for Part 4022 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

§ 4044.13 [Corrected]

11. In § 4044.13(a), the last sentence is corrected by adding, before the period at the end thereof, the words ''and § 4022.21 of this chapter''.

Issued in Washington, D.C., this 22d day of December, 1997.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–33874 Filed 12–29–97; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Chapter V

Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Specially Designated Narcotics Traffickers, and Blocked Vessels: Addition of Foreign Terrorist Organizations; Removal of One Individual

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Amendment of final rule.

SUMMARY: The Treasury Department is adding to appendix A to 31 CFR chapter V the names of 30 foreign terrorist organizations whose funds are required to be blocked by U.S. financial institutions, and removing from appendices A and B the name of one individual determined to no longer be subject to the criteria for designation under sanctions administered against Iraq.

EFFECTIVE DATE: December 23, 1997.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, DC 22201; tel.: 202/622–2420.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem, dial 202/512–1387 and type ''/GO FAC,'' or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in WordPerfect 5.1, ASCII, and Adobe Acrobat™ readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: fedbbs.access.gpo.gov. The document is also accessible for downloading in ASCII format without charge from Treasury's Electronic Library (''TEL'') in the ''Business, Trade and Labor Mall'' of the FedWorld bulletin board. By modem, dial 703/321–3339, and select the appropriate self–expanding file in TEL. For Internet access, use one of the following protocols: Telnet = fedworld.gov (192.239.93.3); World Wide Web (Home Page) = http://www.fedworld.gov; FTP = ftp.fedworld.gov (192.239.92.205). Additional information concerning the programs of the Office of Foreign Assets Control is available for downloading from the Office's Internet Home Page: http://www.ustreas.gov/treasury/services/fac/fac.html, or in fax form through the Office's 24–hour fax–on–demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch–tone telephone.

Background

In furtherance of section 303 of the Antiterrorism and Effective Death Penalty Act of 1996, Public Law 104–132, 110 Stat. 1214–1319 (the ''Act''), implemented in part by the Foreign Terrorist Organizations Sanctions Regulations, 31 CFR part 597 (62 FR 52493, Oct. 8, 1997—the ''Regulations'') the Office of Foreign Assets Control is adding the following 30 foreign terrorist organizations (''FTOs'') to appendix A to 31 CFR chapter V. Section 303 of the Act (new 18 U.S.C. 2339B), as implemented in § 597.201 of the Regulations, requires financial institutions in possession or control of funds in which a foreign terrorist organization or its agent has an interest to block such funds except as authorized pursuant to the Regulations, and to file reports in accordance with the Regulations. Financial institutions that violate of 18 U.S.C. 2339B(a)(2) and the Regulations are subject to civil penalties administered by the Treasury Department.

These 30 FTOs were designated by the Secretary of State in a notice published in the **Federal Register** on October 8, 1997 (62 FR 52650) pursuant to section 302 of the Act (new 8 U.S.C. 1189), which authorizes the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, to designate organizations meeting stated requirements as FTOs, with prior notification to Congress of the intent to designate. Appendix A contains the names of blocked persons, specially designated nationals, specially designated terrorists, and specially designated narcotics traffickers designated pursuant to the various economic sanctions programs administered by the Office of Foreign Assets Control (62 FR 34934, June 27, 1997).

Finally, the entry ''Akram Al–Ogaily'' is removed from appendices A and B as a specially designated national of Iraq, since he has been determined to no longer meet the criteria for designation under sanctions administered against Iraq.

Since this rule involves a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

For the reasons set forth in the preamble, and under the authority of 18 U.S.C. 2339B, 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1701–1706; 50 U.S.C. App. 1–44, appendices A and B to 31 CFR chapter V are amended as set forth below:

1. The notes to the appendices to chapter V are revised to read as follows:

APPENDICES TO CHAPTER V

Notes: The alphabetical lists below provide the following information (to the extent known) concerning blocked persons, specially designated nationals, specially designated terrorists, foreign terrorist organizations, specially designated narcotics traffickers and blocked vessels:

1. For blocked individuals: name and title (known aliases), address, (other identifying information), (the notation ''individual''), [sanctions program under which the individual is blocked].

2. For blocked entities: name (known former or alternate names), address, [sanctions program under which the entity is blocked].

3. For blocked vessels: name, sanctions program under which the vessel is blocked, registration of vessel, type, size in dead weight and/or gross tons, call sign, vessel owner, and alternate names.

4. Abbreviations: ''a.k.a'' means ''also known as''; ''f.k.a.'' means ''formerly known as''; ''n.k.a.'' means ''now known as''; ''DOB'' means ''date of birth''; ''DWT'' means ''Deadweight''; ''FRY (S&M)'' means Federal

Republic of Yugoslavia (Serbia and Montenegro)''; ''GRT'' means ''Gross Registered Tonnage''; ''POB'' means ''place of birth''; ''SRBH'' refers to the suspended sanctions against the Bosnian Serbs.

5. U.S. financial institutions are cautioned to review the details of a transaction prior to blocking in which the abbreviation of a foreign terrorist organization (''FTO'') appears in appendix A to ensure that the transaction relates to the FTO.

6. References to regulatory parts in chapter V:

[CUBA]: Cuban Assets Control Regulations, part 515;
[FRY (S&M)]: Federal Republic of Yugoslavia (Serbia and Montenegro) and Bosnian Serb–Controlled Areas of the Republic of Bosnia and Herzegovina Sanctions Regulations, part 585;
[FTO]: Foreign Terrorist Organizations Sanctions Regulations, part 597;
[IRAN]: Iranian Transactions Regulations, part 560;
[LIBYA]: Libyan Sanctions Regulations, part 550;
[NKOREA]: Foreign Assets Control Regulations, part 500;
[SDNT]: Narcotics Trafficking Sanctions Regulations, part 536;
[SDT]: Terrorism Sanctions Regulations, part 596;
[SRBH]: Federal Republic of Yugoslavia (Serbia and Montenegro) and Bosnian Serb–Controlled Areas of the Republic of Bosnia and Herzegovina Sanctions Regulations, part 585.

2. The heading of appendix A is revised and appendix A, section I, is amended by removing the entry for the name ''AL–OGAILY, Akram H.'', removing all entries that end in ''[SDT]'' where ''[SDT]'' is not preceded by the word ''(individual)'' and by adding the following entries in numerical or alphabetical order to read as follows:

Appendix A to Chapter V—Alphabetical Listing of Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Foreign Terrorist Organizations, and Specially Designated Narcotics Traffickers

I. * * *

* * * * *

17 NOVEMBER (see REVOLUTIONARY ORGANIZATION 17 NOVEMBER) [FTO]

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A.I.C. COMPREHENSIVE RESEARCH INSTITUTE (see AUM SHINRIKYO) [FTO]

A.I.C. SOGO KENKYUSHO (see AUM SHINRIKYO) [FTO]

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ABU GHUNAYM SQUAD OF THE HIZBALLAH BAYT AL–MAQDIS (see PALESTINE

ISLAMIC JIHAD – SHAQAQI FACTION) [SDT, FTO]

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ABU NIDAL ORGANIZATION (a.k.a. ANO; a.k.a. BLACK SEPTEMBER; a.k.a. FATAH REVOLUTIONARY COUNCIL; a.k.a. ARAB REVOLUTIONARY COUNCIL; a.k.a. ARAB REVOLUTIONARY BRIGADES; a.k.a. REVOLUTIONARY ORGANIZATION OF SOCIALIST MUSLIMS) [SDT, FTO]

ABU SAYYAF GROUP (a.k.a. AL HARAKAT AL ISLAMIYYA) [FTO]

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AIG (see ARMED ISLAMIC GROUP) [FTO]

AIIB (see JAPANESE RED ARMY) [FTO]

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AL–FARAN (see HARAKAT UL–ANSAR) [FTO]

AL–GAMA'AT (see GAMA'A AL–ISLAMIYYA) [SDT, FTO]

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AL–HADID (see HARAKAT UL–ANSAR) [FTO]

AL–HADITH (see HARAKAT UL–ANSAR) [FTO]

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AL HARAKAT AL ISLAMIYYA (see ABU SAYYAF GROUP) [FTO]

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AL–JAMA'AH AL–ISLAMIYAH AL–MUSALLAH (see ARMED ISLAMIC GROUP) [FTO]

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AL–JIHAD (a.k.a. EGYPTIAN AL–JIHAD; a.k.a. VANGUARDS OF CONQUEST; a.k.a. VANGUARDS OF VICTORY; a.k.a. TALAI'I AL–FATH; a.k.a. TALA'AH AL–FATAH; a.k.a. TALA'AL AL–FATEH; a.k.a. TALA' AL–FATEH; a.k.a. TALAAH AL–FATAH; a.k.a. TALA'AL–FATEH; a.k.a. NEW JIHAD; a.k.a. EGYPTIAN ISLAMIC JIHAD; a.k.a. JIHAD GROUP) [SDT, FTO]

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ANO (see ABU NIDAL ORGANIZATION) [SDT, FTO]

ANSAR ALLAH (see HIZBALLAH) [SDT, FTO]

ANTI–IMPERIALIST INTERNATIONAL BRIGADE (see JAPANESE RED ARMY) [FTO]

ANTI–WAR DEMOCRATIC FRONT (see JAPANESE RED ARMY) [FTO]

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ARAB REVOLUTIONARY BRIGADES (see ABU NIDAL ORGANIZATION) [SDT, FTO]

ARAB REVOLUTIONARY COUNCIL (see ABU NIDAL ORGANIZATION) [SDT, FTO]

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ARMED ISLAMIC GROUP (a.k.a. GIA; a.k.a. GROUPEMENT ISLAMIQUE ARME; a.k.a. AIG; a.k.a. AL–JAMA'AH AL–ISLAMIYAH AL–MUSALLAH) [FTO]

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AUM SHINRIKYO (a.k.a. AUM SUPREME TRUTH; a.k.a. A.I.C. SOGO KENKYUSHO; a.k.a. A.I.C. COMPREHENSIVE RESEARCH INSTITUTE) [FTO]

AUM SUPREME TRUTH (see AUM SHINRIKYO) [FTO]

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BASQUE FATHERLAND AND LIBERTY (see EUZKADI TA ASKATASUNA) [FTO]

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BLACK SEPTEMBER (see ABU NIDAL ORGANIZATION) [SDT, FTO]

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COMMITTEE FOR THE SAFETY OF THE ROADS (see KACH) [SDT, FTO]

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DEMOCRATIC FRONT FOR THE LIBERATION OF PALESTINE (see DEMOCRATIC FRONT FOR THE LIBERATION OF PALESTINE – HAWATMEH FACTION) [SDT, FTO]

DEMOCRATIC FRONT FOR THE LIBERATION OF PALESTINE – HAWATMEH FACTION (a.k.a. DEMOCRATIC FRONT FOR THE LIBERATION OF PALESTINE; a.k.a. DFLP; a.k.a. RED STAR FORCES; a.k.a. RED STAR BATTALIONS) [SDT, FTO]

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DEV SOL (see REVOLUTIONARY PEOPLE'S LIBERATION PARTY/FRONT) [FTO]

DEV SOL ARMED REVOLUTIONARY UNITS (see REVOLUTIONARY PEOPLE'S LIBERATION PARTY/FRONT) [FTO]

DEV SOL SDB (see REVOLUTIONARY PEOPLE'S LIBERATION PARTY/FRONT) [FTO]

DEV SOL SILAHLI DEVRIMCI BIRLIKLERI (see REVOLUTIONARY PEOPLE'S LIBERATION PARTY/FRONT) [FTO]

DEVRIMCI HALK KURTULUS PARTISI–CEPHESI (see REVOLUTIONARY PEOPLE'S LIBERATION PARTY/FRONT) [FTO]

DEVRIMCI SOL (see REVOLUTIONARY PEOPLE'S LIBERATION PARTY/FRONT) [FTO]

DFLP (see DEMOCRATIC FRONT FOR THE LIBERATION OF PALESTINE – HAWATMEH FACTION) [SDT, FTO]

DHKP/C (see REVOLUTIONARY PEOPLE'S LIBERATION PARTY/FRONT) [FTO]

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DIKUY BOGDIM (see KACH) [SDT, FTO]

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DOV (see KACH) [SDT, FTO]

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EGP (see SHINING PATH) [FTO]

EGYPTIAN AL–GAMA'AT AL–ISLAMIYYA (see GAMA'A AL–ISLAMIYYA) [SDT, FTO]

EGYPTIAN AL–JIHAD (see AL–JIHAD) [SDT, FTO]

EGYPTIAN ISLAMIC JIHAD (see AL–JIHAD) [SDT, FTO]

EJERCITO DE LIBERACION NACIONAL (see NATIONAL LIBERATION ARMY) [FTO]

EJERCITO GUERRILLERO POPULAR (PEOPLE'S GUERRILLA ARMY) (see SHINING PATH) [FTO]

EJERCITO POPULAR DE LIBERACION (PEOPLE'S LIBERATION ARMY) (see SHINING PATH) [FTO]

ELA (see REVOLUTIONARY PEOPLE'S STRUGGLE) [FTO]

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ELLALAN FORCE (see LIBERATION TIGERS OF TAMIL EELAM) [FTO]

ELN (see NATIONAL LIBERATION ARMY) [FTO]

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EPANASTATIKI ORGANOSI 17 NOEMVRI (see REVOLUTIONARY ORGANIZATION 17 NOVEMBER) [FTO]

EPANASTATIKOS LAIKOS AGONAS (see REVOLUTIONARY PEOPLE'S STRUGGLE) [FTO]

EPL (see SHINING PATH) [FTO]

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ETA (see EUZKADI TA ASKATASUNA) [FTO]

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EUZKADI TA ASKATASUNA (a.k.a. BASQUE FATHERLAND AND LIBERTY; a.k.a. ETA) [FTO]

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FARC (see REVOLUTIONARY ARMED FORCES OF COLOMBIA) [FTO]

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FATAH REVOLUTIONARY COUNCIL (see ABU NIDAL ORGANIZATION) [SDT, FTO]

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FOLLOWERS OF THE PROPHET MUHAMMAD (see HIZBALLAH) [SDT, FTO]

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FPMR (see MANUEL RODRIGUEZ PATRIOTIC FRONT DISSIDENTS) [FTO]

FPMR/A (see MANUEL RODRIGUEZ PATRIOTIC FRONT DISSIDENTS) [FTO]

FPMR/D (see MANUEL RODRIGUEZ PATRIOTIC FRONT DISSIDENTS) [FTO]

FRENTE PATRIOTICO MANUEL RODRIGUEZ (see MANUEL RODRIGUEZ PATRIOTIC FRONT DISSIDENTS) [FTO]

FRENTE PATRIOTICO MANUEL RODRIGUEZ – AUTONOMOS (see MANUEL RODRIGUEZ PATRIOTIC FRONT DISSIDENTS) [FTO]

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FUERZAS ARMADAS REVOLUCIONARIAS DE COLOMBIA (see REVOLUTIONARY ARMED FORCES OF COLOMBIA) [FTO]

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GAMA'A AL–ISLAMIYYA (a.k.a. ISLAMIC GROUP; a.k.a. IG; a.k.a. AL–GAMA'AT; a.k.a. ISLAMIC GAMA'AT; a.k.a. EGYPTIAN AL–GAMA'AT AL–ISLAMIYYA) [SDT, FTO]

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GIA (see ARMED ISLAMIC GROUP) [FTO]

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GROUPEMENT ISLAMIQUE ARME (see ARMED ISLAMIC GROUP) [FTO]

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HALHUL GANG (see POPULAR FRONT FOR THE LIBERATION OF PALESTINE) [SDT, FTO]

HALHUL SQUAD (see POPULAR FRONT FOR THE LIBERATION OF PALESTINE) [SDT, FTO]

HAMAS (a.k.a. ISLAMIC RESISTANCE MOVEMENT; a.k.a. HARAKAT AL–MUQAWAMA AL–ISLAMIYA; a.k.a. STUDENTS OF AYYASH; a.k.a. STUDENTS OF THE ENGINEER; a.k.a. YAHYA AYYASH UNITS; a.k.a. IZZ AL–DIN AL–QASSIM BRIGADES; a.k.a. IZZ AL–DIN AL–QASSIM FORCES; a.k.a. IZZ AL–DIN AL–QASSIM BATTALIONS; a.k.a. IZZ AL–DIN AL QASSAM BRIGADES; a.k.a. IZZ AL–DIN AL QASSAM FORCES; a.k.a. IZZ AL–DIN AL QASSAM BATTALIONS) [SDT, FTO]

HARAKAT AL–MUQAWAMA AL–ISLAMIYA (see HAMAS) [SDT, FTO]

HARAKAT UL–ANSAR (a.k.a. HUA; a.k.a. AL–HADID; a.k.a. AL–HADITH; a.k.a. AL–FARAN) [FTO]

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HIZBALLAH (a.k.a. PARTY OF GOD; a.k.a. ISLAMIC JIHAD; a.k.a. ISLAMIC JIHAD ORGANIZATION; a.k.a. REVOLUTIONARY JUSTICE ORGANIZATION; a.k.a. ORGANIZATION OF THE OPPRESSED ON EARTH; a.k.a. ISLAMIC JIHAD FOR THE LIBERATION OF PALESTINE; a.k.a. ORGANIZATION OF RIGHT AGAINST WRONG; a.k.a. ANSAR ALLAH; a.k.a. FOLLOWERS OF THE PROPHET MUHAMMAD) [SDT, FTO]

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HOLY WAR BRIGADE (see JAPANESE RED ARMY) [FTO]

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HUA (see HARAKAT UL–ANSAR) [FTO]

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IG (see GAMA'A AL–ISLAMIYYA) [SDT, FTO]

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ISLAMIC GAMA'AT (see GAMA'A AL–ISLAMIYYA) [SDT, FTO]

ISLAMIC GROUP (see GAMA'A AL–ISLAMIYYA) [SDT, FTO]

ISLAMIC JIHAD (see HIZBALLAH) [SDT, FTO]

ISLAMIC JIHAD FOR THE LIBERATION OF PALESTINE (see HIZBALLAH) [SDT, FTO]

ISLAMIC JIHAD IN PALESTINE (see PALESTINE ISLAMIC JIHAD – SHAQAQI FACTION) [SDT, FTO]

ISLAMIC JIHAD OF PALESTINE (see PALESTINE ISLAMIC JIHAD – SHAQAQI FACTION) [SDT, FTO]

ISLAMIC JIHAD ORGANIZATION (see HIZBALLAH) [SDT, FTO]

ISLAMIC RESISTANCE MOVEMENT (see HAMAS) [SDT, FTO]

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IZZ AL–DIN AL QASSAM BATTALIONS (see HAMAS) [SDT, FTO]

IZZ AL–DIN AL QASSAM BRIGADES (see HAMAS) [SDT, FTO]

IZZ AL–DIN AL QASSAM FORCES (see HAMAS) [SDT, FTO]

IZZ AL–DIN AL–QASSIM BATTALIONS (see HAMAS) [SDT, FTO]

IZZ AL–DIN AL–QASSIM BRIGADES (see HAMAS) [SDT, FTO]

IZZ AL–DIN AL–QASSIM FORCES (see HAMAS) [SDT, FTO]

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JAPANESE RED ARMY (a.k.a. NIPPON SEKIGUN; a.k.a. NIHON SEKIGUN; a.k.a. ANTI–IMPERIALIST INTERNATIONAL BRIGADE; a.k.a. HOLY WAR BRIGADE; a.k.a. ANTI–WAR DEMOCRATIC FRONT; a.k.a. JRA; a.k.a. AIIB) [FTO]

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JIHAD GROUP (see AL–JIHAD) [SDT, FTO]

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JRA (see JAPANESE RED ARMY) [FTO]

JUDEA POLICE (see KACH) [SDT, FTO]

JUDEAN VOICE (see KAHANE CHAI) [SDT, FTO]

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KACH (a.k.a. REPRESSION OF TRAITORS; a.k.a. DIKUY BOGDIM; a.k.a. DOV; a.k.a. STATE OF JUDEA; a.k.a. COMMITTEE FOR THE SAFETY OF THE ROADS; a.k.a. SWORD OF DAVID; a.k.a. JUDEA POLICE) [SDT, FTO]

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KAHANE CHAI (a.k.a. KAHANE LIVES; a.k.a. KFAR TAPUAH FUND; a.k.a. JUDEAN VOICE) [SDT, FTO]

KAHANE LIVES (see KAHANE CHAI) [SDT, FTO]

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KFAR TAPUAH FUND (see KAHANE CHAI) [SDT, FTO]

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KHMER ROUGE (a.k.a. PARTY OF DEMOCRATIC KAMPUCHEA; a.k.a. NATIONAL ARMY OF DEMOCRATIC KAMPUCHEA) [FTO]

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KURDISTAN WORKERS' PARTY (a.k.a. PKK; a.k.a. PARTIYA KARKERAN KURDISTAN) [FTO]

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LIBERATION TIGERS OF TAMIL EELAM (a.k.a. LTTE; a.k.a. TAMIL TIGERS; a.k.a. ELLALAN FORCE) [FTO]

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LTTE (see LIBERATION TIGERS OF TAMIL EELAM) [FTO]

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MANUEL RODRIGUEZ PATRIOTIC FRONT (see MANUEL RODRIGUEZ PATRIOTIC FRONT DISSIDENTS) [FTO]

MANUEL RODRIGUEZ PATRIOTIC FRONT DISSIDENTS (a.k.a. FPMR/D; a.k.a. FRENTE PATRIOTICO MANUEL RODRIGUEZ – AUTONOMOS; a.k.a. FPMR/A; a.k.a. MANUEL RODRIGUEZ PATRIOTIC FRONT; a.k.a. FRENTE PATRIOTICO MANUEL RODRIGUEZ; a.k.a. FPMR) [FTO]

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MEK (see MUJAHEDIN–E KHALQ ORGANIZATION) [FTO]

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MKO (see MUJAHEDIN–E KHALQ ORGANIZATION) [FTO]

MOVIMENTO REVOLUCIONARIO TUPAC AMARU (see TUPAC AMARU REVOLUTIONARY MOVEMENT) [FTO]

MRTA (see TUPAC AMARU REVOLUTIONARY MOVEMENT) [FTO]

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MUJAHEDIN–E KHALQ (see MUJAHEDIN–E KHALQ ORGANIZATION) [FTO]

MUJAHEDIN–E KHALQ ORGANIZATION (a.k.a. MEK; a.k.a. MKO; a.k.a. MUJAHEDIN–E KHALQ; a.k.a. PEOPLE'S MUJAHEDIN ORGANIZATION OF IRAN; a.k.a. PMOI; a.k.a. ORGANIZATION OF THE PEOPLE'S HOLY WARRIORS OF IRAN; a.k.a. SAZEMAN–E MUJAHEDIN–E KHALQ–E IRAN) [FTO]

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NATIONAL ARMY OF DEMOCRATIC KAMPUCHEA (see KHMER ROUGE) [FTO]

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NATIONAL LIBERATION ARMY (a.k.a. ELN; a.k.a. EJERCITO DE LIBERACION NACIONAL) [FTO]

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NEW JIHAD (see AL–JIHAD) [SDT, FTO]

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NIHON SEKIGUN (see JAPANESE RED ARMY) [FTO]

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NIPPON SEKIGUN (see JAPANESE RED ARMY) [FTO]

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ORGANIZATION OF RIGHT AGAINST WRONG (see HIZBALLAH) [SDT, FTO]

ORGANIZATION OF THE OPPRESSED ON EARTH (see HIZBALLAH) [SDT, FTO]

ORGANIZATION OF THE PEOPLE'S HOLY WARRIORS OF IRAN (see MUJAHEDIN–E KHALQ ORGANIZATION) [FTO]

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PALESTINE ISLAMIC JIHAD – SHAQAQI FACTION (a.k.a. PIJ–SHAQAQI FACTION; a.k.a. PIJ; a.k.a. ISLAMIC JIHAD IN PALESTINE; a.k.a. ISLAMIC JIHAD OF PALESTINE; a.k.a. ABU GHUNAYM SQUAD OF THE HIZBALLAH BAYT AL–MAQDIS) [SDT, FTO]

PALESTINE LIBERATION FRONT (see PALESTINE LIBERATION FRONT – ABU ABBAS FACTION) [SDT, FTO]

PALESTINE LIBERATION FRONT – ABU ABBAS FACTION (a.k.a. PALESTINE LIBERATION FRONT; a.k.a. PLF; a.k.a. PLF–ABU ABBAS) [SDT, FTO]

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PARTIDO COMUNISTA DEL PERU (COMMUNIST PARTY OF PERU) (see SHINING PATH) [FTO]

PARTIDO COMUNISTA DEL PERU EN EL SENDERO LUMINOSO DE JOSE CARLOS MARIATEGUI (COMMUNIST PARTY OF PERU ON THE SHINING PATH OF JOSE CARLOS MARIATEGUI) (see SHINING PATH) [FTO]

PARTIYA KARKERAN KURDISTAN (see KURDISTAN WORKERS' PARTY) [FTO]

PARTY OF DEMOCRATIC KAMPUCHEA (see KHMER ROUGE) [FTO]

PARTY OF GOD (see HIZBALLAH) [SDT, FTO]

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PCP (see SHINING PATH) [FTO]

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PEOPLE'S MUJAHEDIN ORGANIZATION OF IRAN (see MUJAHEDIN–E KHALQ ORGANIZATION) [FTO]

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PFLP (see POPULAR FRONT FOR THE LIBERATION OF PALESTINE) [SDT, FTO]

PFLP–GC (see POPULAR FRONT FOR THE LIBERATION OF PALESTINE – GENERAL COMMAND) [SDT, FTO]

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PIJ (see PALESTINE ISLAMIC JIHAD – SHAQAQI FACTION) [SDT, FTO]

PIJ–SHAQAQI FACTION (see PALESTINE ISLAMIC JIHAD – SHAQAQI FACTION) [SDT, FTO]

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PKK (see KURDISTAN WORKERS' PARTY) [FTO]

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PLF (see PALESTINE LIBERATION FRONT – ABU ABBAS FACTION) [SDT, FTO]

PLF–ABU ABBAS (see PALESTINE LIBERATION FRONT – ABU ABBAS FACTION) [SDT, FTO]

PMOI (see MUJAHEDIN–E KHALQ ORGANIZATION) [FTO]

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POPULAR FRONT FOR THE LIBERATION OF PALESTINE (a.k.a. PFLP; a.k.a. RED EAGLES; a.k.a. RED EAGLE GROUP; a.k.a. RED EAGLE GANG; a.k.a. HALHUL GANG; a.k.a. HALHUL SQUAD) [SDT, FTO]

POPULAR FRONT FOR THE LIBERATION OF PALESTINE – GENERAL COMMAND (a.k.a. PFLP–GC) [SDT, FTO]

POPULAR REVOLUTIONARY STRUGGLE (see REVOLUTIONARY PEOPLE'S STRUGGLE) [FTO]

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RED EAGLE GANG (see POPULAR FRONT FOR THE LIBERATION OF PALESTINE) [SDT, FTO]

RED EAGLE GROUP (see POPULAR FRONT FOR THE LIBERATION OF PALESTINE) [SDT, FTO]

RED EAGLES (see POPULAR FRONT FOR THE LIBERATION OF PALESTINE) [SDT, FTO]

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RED STAR BATTALIONS (see DEMOCRATIC FRONT FOR THE LIBERATION OF PALESTINE – HAWATMEH FACTION) [SDT, FTO]

RED STAR FORCES (see DEMOCRATIC FRONT FOR THE LIBERATION OF PALESTINE – HAWATMEH FACTION) [SDT, FTO]

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REPRESSION OF TRAITORS (see KACH) [SDT, FTO]

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REVOLUTIONARY ARMED FORCES OF COLOMBIA (a.k.a. FARC; a.k.a. FUERZAS ARMADAS REVOLUCIONARIAS DE COLOMBIA) [FTO]

REVOLUTIONARY JUSTICE ORGANIZATION (see HIZBALLAH) [SDT, FTO]

REVOLUTIONARY LEFT (see REVOLUTIONARY PEOPLE'S LIBERATION PARTY/FRONT) [FTO]

REVOLUTIONARY ORGANIZATION OF SOCIALIST MUSLIMS (see ABU NIDAL ORGANIZATION) [SDT, FTO]

REVOLUTIONARY ORGANIZATION 17 NOVEMBER (a.k.a. 17 NOVEMBER; a.k.a. EPANASTATIKI ORGANOSI 17 NOEMVRI) [FTO]

REVOLUTIONARY PEOPLE'S LIBERATION PARTY/FRONT (a.k.a. DEVRIMCI HALK KURTULUS PARTISI–CEPHESI; a.k.a. DHKP/C; a.k.a. DEVRIMCI SOL; a.k.a. REVOLUTIONARY LEFT; a.k.a. DEV SOL; a.k.a. DEV SOL SILAHLI DEVRIMCI BIRLIKLERI; a.k.a. DEV SOL SDB; a.k.a. DEV SOL ARMED REVOLUTIONARY UNITS) [FTO]

REVOLUTIONARY PEOPLE'S STRUGGLE (a.k.a. EPANASTATIKOS LAIKOS AGONAS; a.k.a. ELA; a.k.a. REVOLUTIONARY POPULAR STRUGGLE; a.k.a. POPULAR REVOLUTIONARY STRUGGLE) [FTO]

REVOLUTIONARY POPULAR STRUGGLE (see REVOLUTIONARY PEOPLE'S STRUGGLE) [FTO]

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SAZEMAN–E MUJAHEDIN–E KHALQ–E IRAN (see MUJAHEDIN–E KHALQ ORGANIZATION) [FTO]

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SENDERO LUMINOSO (see SHINING PATH) [FTO]

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SHINING PATH (a.k.a. SENDERO LUMINOSO; a.k.a. SL; a.k.a. PARTIDO COMUNISTA DEL PERU EN EL SENDERO LUMINOSO DE JOSE CARLOS MARIATEGUI (COMMUNIST PARTY OF PERU ON THE SHINING PATH OF JOSE CARLOS MARIATEGUI); a.k.a. PARTIDO COMUNISTA DEL PERU (COMMUNIST PARTY OF PERU); a.k.a. PCP; a.k.a. SOCORRO POPULAR DEL PERU (PEOPLE'S AID OF PERU); a.k.a. SPP; a.k.a EJERCITO GUERRILLERO POPULAR (PEOPLE'S GUERRILLA ARMY); a.k.a. EGP; a.k.a. EJERCITO POPULAR DE LIBERACION (PEOPLE'S LIBERATION ARMY); a.k.a. EPL) [FTO]

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SL (see SHINING PATH) [FTO]

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SOCORRO POPULAR DEL PERU (PEOPLE'S AID OF PERU) (see SHINING PATH) [FTO]

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SPP (see SHINING PATH) [FTO]

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STATE OF JUDEA (see KACH) [SDT, FTO]

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STUDENTS OF AYYASH (see HAMAS) [SDT, FTO]

STUDENTS OF THE ENGINEER (see HAMAS) [SDT, FTO]

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SWORD OF DAVID (see KACH) [SDT, FTO]

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TALA' AL–FATEH (see AL–JIHAD) [SDT, FTO]

TALA'AH AL–FATAH (see AL–JIHAD) [SDT, FTO]

TALAAH AL–FATAH (see AL–JIHAD) [SDT, FTO]

TALA'AL AL–FATEH (see AL–JIHAD) [SDT, FTO]

TALA'AL–FATEH (see AL–JIHAD) [SDT, FTO]

TALAI'I AL–FATH (see AL–JIHAD) [SDT, FTO]

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TAMIL TIGERS (see LIBERATION TIGERS OF TAMIL EELAM) [FTO]

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TUPAC AMARU REVOLUTIONARY MOVEMENT (a.k.a. MOVIMIENTO REVOLUCIONARIO TUPAC AMARU; a.k.a. MRTA) [FTO]

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VANGUARDS OF CONQUEST (see AL–JIHAD) [SDT, FTO]

VANGUARDS OF VICTORY (see AL–JIHAD) [SDT, FTO]

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YAHYA AYYASH UNITS (see HAMAS) [SDT, FTO]

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Appendix B [Amended]

3. Appendix B to chapter V of 31 CFR is amended by removing the entry for the name ''AL–OGAILY, Akram H.'' under the heading ''England.''

Dated: October 31, 1997.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved:

James E. Johnson,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 97–33840 Filed 12–23–97; 10:46 am]

BILLING CODE 4810–25–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 85 and 89

[AMS–FRL–5939–5]

Control of Air Pollution: Emission Standards for New Nonroad Compression-Ignition Engines at or Above 37 Kilowatts; Preemption of State Regulation for Nonroad Engine and Vehicle Standards; Amendments to Rules

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: This direct final rulemaking, consistent with an order and opinion from the U.S. Court of Appeals for the District of Columbia Circuit, amends EPA's regulations setting emission standards for large (at or above 37 kilowatts) nonroad compression ignition engines, and EPA's regulations establishing procedures for EPA authorization of California nonroad emission standards. Specifically, EPA is withdrawing portions of an interpretive rule which set forth the Agency's position on the Clean Air Act (Act) regarding the status of certain internal combustion engines manufactured before the effective date of the final rulemaking promulgating EPA's definition of nonroad engine. Additionally, consistent with the D.C. Circuit opinion, EPA also is amending the remaining text of this interpretive rule, as well as EPA's regulations issued under section 209(e) of the Act regarding the Agency's California nonroad standards authorization process, to clarify that California must seek authorization from EPA prior to enforcing standards and other requirements relating to emissions from any nonroad vehicles or engines, and not just new nonroad vehicles and engines, which was the original language used in these regulations.

DATES: This direct final rule is effective on March 2, 1998 unless notice is received by January 29, 1998 that any person wishes to submit adverse comments and/or request a hearing. Should EPA receive such notice, EPA will publish a timely document in the **Federal Register** withdrawing this direct final rule. Any party who sends EPA notice of intent to submit adverse comments must in turn submit the adverse comments by March 2, 1998, unless a hearing is requested. Any party objecting to this direct final rule, at the time it notifies EPA of its intent to submit adverse comments, can request EPA to hold a public hearing on this action. If a hearing is requested, it will take place on March 2, 1998, and interested parties will have an additional 30 days after the hearing (until March 30, 1998) to submit comments on any information presented at the hearing. Because no hearing will occur absent a request for one, interested parties should contact Robert M. Doyle at the number listed below after January 29, 1998 to determine whether a hearing will take place.

ADDRESSES: Written comments should be submitted (in duplicate if possible) to: Air Docket Section (6102), Attention: Docket No. A–91–24, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, or hand-delivered to the Air Docket at the above address, in Room M–1500, Waterside Mall. A copy of written comments should also be submitted to Robert M. Doyle at the address below.

FOR FURTHER INFORMATION CONTACT: Robert M. Doyle, Attorney/Advisor, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M. Street, S.W., Washington, D.C. 20560, (202) 564–9258, FAX (202) 233–9596, E-Mail, Doyle.Robert@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Entities potentially regulated by this direct final rule are the California Air Resources Board and other state air quality agencies. Regulated categories and entities include:

Category	Examples of regulated entities
State and local government.	California Air Resources Board. State and local air quality agencies.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular product, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Obtaining Electronic Copies of Documents

Electronic copies of the preamble and the regulatory text of this direct final rule are available via the Internet on the Office of Mobile Sources (OMS) Home Page (http://www.epa.gov/OMSWWW/). Users can find these documents and other nonroad engine and vehicle related information and documents by accessing the OMS Home Page and looking at the path entitled ''Nonroad engines and vehicles.'' This service is free of charge, except for any cost you already incur for Internet connectivity. The official **Federal Register** version is made available on the day of publication on the primary Web site (http://www.epa.gov/docs/fedrgstr/EPA–AIR/).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

III. Legal Authority and Background

Authority for the actions set forth in this direct final rule is granted to EPA by sections 209, 213, and 301 of the Clean Air Act as amended (42 U.S.C. 7543, 7547, and 7601).

A. Amendments and Redesignation of Appendix Containing Interpretive Rule on Date and Scope of Nonroad Preemption

On May 17, 1993, EPA proposed rules setting standards for emissions from nonroad compression ignition engines at or above 37 kilowatts (approximately 50 horsepower) in power (large nonroad engine rule).[1] In this NPRM, EPA was faced with the question (among many issues) of the manner and the extent to which states could regulate nonroad engines, which some states and localities previously had regulated as stationary sources. EPA noted that while emissions from nonroad engines are excluded from the Act's section 302(z) definition of stationary source,[2] the exclusion would apply only to those nonroad internal combustion engines that are manufactured after the effective

[1] 58 FR 28809 (May 17, 1993).

[2] Section 302(z) states that the ''term 'stationary source' means generally any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216.''

date of the large nonroad engine rule. EPA also noted that nonroad engines may be subject to state-imposed in-use restrictions such as limits on hours of use and may be subject to state regulation under section 209(e)(2).[3]

During the rulemaking, EPA received comments from several parties objecting to its interpretation of the correct effective date. These parties generally asserted that the language in section 302(z) applied to all nonroad engines in existence on or after November 15, 1990, the date of the enactment of the Clean Air Act Amendments of 1990 (CAAA). The effect of this assertion would be that states would be preempted from promulgating emission standards or other requirements for nonroad engines produced after that date.

On June 17, 1994, EPA published a final rule[4] setting the standards for the large nonroad compression ignition engines; the effective date for this rule was July 18, 1994, 30 days after its **Federal Register** publication. In that rule, EPA finalized the definition of ''nonroad engine,'' which determined whether certain engines should be considered ''nonroad engines'' or ''stationary sources.'' After careful consideration of the comments on the rule's preemption date briefly summarized above, EPA added an interpretive rule in the form of an appendix (Appendix A) to the regulations summarizing EPA's decisions on these preemption issues. In Appendix A, EPA noted basically that it interprets the Act as not precluding state regulation of internal combustion engines manufactured prior to July 18, 1994, except that state regulation of such engines that are used in motor vehicles or vehicles used solely for competition is precluded. Additionally, EPA noted that it believes that states are not precluded under section 209 of the Act from regulating the use and operation of nonroad engines. Appendix A has been codified as part of the large nonroad engine rule and appears in the current volume of 40 CFR part 89 (July 1, 1996).

On or before August 16, 1994, nine parties timely filed petitions with the United States Court of Appeals for the D.C. Circuit for review of the large nonroad engine rule, and of the related rule establishing the scope of preemption of state or local standards regulating nonroad engines and the procedures that California must follow when seeking EPA authorization to adopt and enforce California-specific nonroad engine standards under section 209(e) of the Act. These nine petitions were consolidated as *Engine Manufacturers Association, et. al.,* v. *EPA,* Docket No. 94–1558, (*EMA* v. *EPA*). The petitioners challenged several aspects of these rules, including the EPA interpretation contained in Appendix A. After preliminary discussions with petitioners, EPA decided that it was appropriate to review its interpretation that preemption of state and local regulations did not effect engines manufactured prior to July 18, 1994. Therefore, on September 19, 1995, EPA filed with the Court a Motion for Vacatur and Remand of its interpretation. The consolidated petitioners did not oppose EPA's Motion.

On October 20, 1995, the Court granted EPA's Motion and ordered that paragraphs 1 and 2 of Appendix A be vacated and remanded to the Agency for further consideration. Today's direct final rule implements the order of the Court by removing paragraphs 1 and 2 from Appendix A, and retitling Appendix A to be descriptive of its revised content.

EPA notes that although paragraphs 1 and 2 of Appendix A are now vacated, paragraph 3 remains effective, though this rule revises that paragraph. This paragraph, which appears in the revised text of Appendix A, contains EPA's determination that states are not precluded from regulating the use of nonroad engines. On July 12, 1996, the Court handed down its decision in *EMA* v. *EPA,* and held that EPA had made a reasonable interpretation of the Act in finding that the preemption of state regulations did not extend to restrictions on the use of nonroad engines.[5] EPA, however, has deleted the last two sentences of paragraph 3 and added a new sentence consistent with the Court's ruling on the scope of implied preemption of state standards, discussed in detail in Section B. below.

B. Scope of Implied Preemption of State Standards

Under section 209(e) of the Act as amended, EPA was required to ''issue regulations to implement'' subsection (e), which addressed the ability of states to adopt emission standards and other requirements for nonroad engines and vehicles. Under section 209(e): (1) All states are preempted from adopting emission standards and other requirements for new nonroad engines used in construction or farm equipment or vehicles which are smaller than 175 horsepower and for new locomotives and new engines used in locomotives; (2) California may adopt and enforce standards and other requirements for nonroad engines other than the specifically preempted categories listed directly above, after receiving authorization to do so from EPA; and (3) other states may adopt California's nonroad emission standards and other requirements after EPA has authorized the standards and other requirements and the adopting state has allowed the statutorily required two-year leadtime.

On July 20, 1994, EPA promulgated regulations which established the process under which the Agency would authorize California nonroad emission standards and other requirements (section 209(e) regulations). During the rulemaking, EPA addressed the issue of the scope of the Act's preemption on state regulation of nonroad engines and vehicles. Section 209(e)(2) directs EPA to authorize, when all conditions are met, California emission standards for ''*any* nonroad vehicles or engines other than [the new under 175 hp farm and construction equipment engines and the new locomotive engines] * * * (emphasis added).'' EPA interpreted the implied preemption of state standards in section 209(e) to apply only to *new* nonroad engines rather than any nonroad engines, which could include both new and used engines. In the Preamble to these regulations, EPA stated clearly that it believed ''that the requirements of section 209(e)(2) apply only to new nonroad engines and vehicles (emphasis added).''[6] Accordingly, the regulations required California to seek EPA authorization only for ''standards and other requirements relating to the control of emissions from new nonroad vehicles or engines that are otherwise not preempted.''[7]

As discussed above, petitions to the D.C. Circuit for review of the section 209(e) regulations and the large nonroad engine rule were filed and consolidated as *EMA* v. *EPA*. In this litigation, the petitioners agreed with EPA that section 209(e)(2) implied preemption of state regulation of nonroad engines and vehicles, but argued that the preemption applied to standards for all nonroad

[3] Section 209(e)(2)(A) directs EPA to authorize California to adopt and enforce standards and other requirements for nonroad engines and nonroad vehicles (with some categorical exceptions) if California's regulations meet the criteria set forth in the Act. Other states may adopt EPA-authorized California nonroad engine or vehicle standards if the states comply with the criteria listed in section 209(e)(2)(B).

[4] 59 FR 31306 (June 17, 1994).

[5] *EMA* v. *EPA,* 88 F.3d 1075, 1093–94 (D.C. Cir. 1996).

[6] 59 FR 36969, 36973 (July 20, 1994).

[7] 40 CFR 86.1604(a) (July 1, 1996).

sources, both new and non-new, because the statute did not include the word ''new'' in specifying what nonroad vehicles and engines for which California and other states could promulgate standards,[8] and for other reasons. In its opinion in this case handed down July 12, 1996, the Court agreed with the petitioners on this particular point, and granted the EMA petition ''insofar as they challenge the limitation of the implied section 209(e)(2) preemption to new nonroad sources.'' [9]

Today's direct final rule implements the opinion of the Court regarding the scope of preemption of section 209(e)(2) by amending the language of the implementing regulations to reflect that California must request authorization for its emission standards and other related requirements for all nonroad vehicles and engines.[10] EPA has also deleted the final two sentences of Appendix A, dealing with the ability of states to require retrofit technologies, as the language as currently written is inconsistent with the opinion of the Court, and added a sentence which reflects the Court's holding by noting that states may adopt only those retrofit requirements for nonroad engines identical to California requirements which have been authorized by EPA under section 209 of the Act. EPA has also modified the language of Appendix A to state more simply and clearly that state regulation of the use and operation of nonroad engines can occur when the engines are no longer new.

C. Public Participation and Effective Date

EPA is publishing this rule without prior proposal because EPA views these amendments as noncontroversial and anticipates no adverse comments. However, in the event that adverse or critical comments are filed, EPA has prepared a Notice of Proposed Rulemaking (NPRM) proposing the same amendments. This NPRM is contained in a separate document in this **Federal Register** publication. The direct final action will be effective March 2, 1998 unless adverse or critical comments are received by January 29, 1998. If EPA receives adverse or critical comments on the revisions discussed in this section, the revisions receiving adverse comment will be withdrawn before the effective date. In case of the withdrawal of all or part of this action, the withdrawal will be announced by a subsequent **Federal Register** document. All public comments will then be addressed in a subsequent final rule based on the accompanying proposed rule. EPA will not implement a second comment period on this action. Any parties interested in commenting on this rule should do so at this time. If no adverse comments are received, the public is advised that the rule will be effective March 2, 1998.

EPA is continuing to review its policy concerns and options regarding the date of preemption for the nonroad engine rules. EPA may in the future determine that it is appropriate to issue a new interpretation to address this issue.

IV. Administrative Requirements

A. Administrative Designation

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

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

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

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

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

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Reporting and Recordkeeping Requirements

This rule does not change the information collection requirements submitted to and approved by OMB in association with the large nonroad engine final rulemaking (59 FR 31306, June 17, 1994).

C. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. This rule will not have a significant adverse economic impact on a substantial number of small businesses. The only revisions EPA is making in this final rule are pursuant to the decision of the Court. These changes are directed at state and local governments and are expected to affect few, if any, existing or future local or state regulations.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Unfunded Mandates Act

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 this rule 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.

List of Subjects

40 CFR Part 85

Environmental protection, Administrative practice and procedure, Air pollution control, Federal preemption, Motor vehicle pollution, Nonroad engine and vehicle pollution,

[8] Section 209(e)(2)(A) states ''(I)n the case of any nonroad vehicles or engines other than those referred to in subparagraph (A) or (B) of paragraph (1), * * *''

[9] *EMA* v. *EPA*, 88 F.3d at 1094.

[10] EPA has also amended the text of the implementing regulations in appropriate places by changing ''states'' to ''states and any political subdivision thereof'' to make this language fully consistent with the applicable language of section 209(e) of the Act. Additionally, EPA has revised the Title of Part 85 to reflect that this Part contains regulations covering both onroad vehicles and engines and nonroad vehicles and engines. These amendments were not directed by the Court, but are being done as part of today's direct final rule for editorial efficiency.

Reporting and recordkeeping requirements, State controls.

40 CFR Part 89

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Incorporation by reference, Labeling, Nonroad source pollution, Reporting and recordkeeping requirements.

Dated: December 17, 1997.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, parts 85 and 89 of title 40 of the Code of Federal Regulations are amended as follows:

PART 85—CONTROL OF AIR POLLUTION FROM MOBILE SOURCES

1. The heading for part 85 is revised to read as set forth above.

Subpart Q—Preemption of State Standards and Waiver Procedures for Nonroad Engines and Nonroad Vehicles

2. The authority citation for part 85 is revised to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7543, 7547, and 7601(a).

3. Section 85.1603 is amended by revising paragraphs (b), (c) and (d) to read as follows:

§ 85.1603 Application of definitions; scope of preemption.

* * * * *

(b) States and any political subdivisions thereof are preempted from adopting or enforcing standards or other requirements from new engines smaller than 175 horsepower, that are primarily used in farm or construction equipment or vehicles, as defined in this subpart.

(c) States and any political subdivisions thereof are preempted from adopting or enforcing standards or other requirements relating to the control of emissions from new locomotives or new engines used in locomotives.

(d) No state or any political subdivisions thereof shall enforce any standards or other requirements relating to the control of emissions from nonroad engines or vehicles except as provided for in this subpart.

4. Section 85.1604 is amended by revising paragraph (a) to read as follows:

§ 85.1604 Procedures for California nonroad authorization requests.

(a) California shall request authorization to enforce its adopted standards and other requirements relating to the control of emissions from nonroad vehicles or engines that are otherwise not preempted by § 85.1603(b) or § 85.1603(c) from the Administrator of EPA and provide the record on which the state rulemaking was based.

* * * * *

5. Section 85.1606 is amended by revising the introductory text to read as follows:

§ 85.1606 Adoption of California standards by other states.

Any state other than California which has plan provisions approved under Part D of Title I of the Clean Air Act may adopt and enforce emission standards for any period, for nonroad vehicles and engines subject to the following requirements:

* * * * *

PART 89—CONTROL OF EMISSIONS FROM NEW AND IN-USE NONROAD ENGINES

1. The authority citation for part 89 continues to read as follows:

Authority: Sections 202, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

2. Appendix A to Subpart A is revised including the appendix heading to read as follows:

Appendix A to Subpart A—State Regulation of Nonroad Internal Combustion Engines

This appendix sets forth the Environmental Protection Agency's (EPA's) interpretation of the Clean Air Act regarding the authority of states to regulate the use and operation of nonroad engines.

EPA believes that states are not precluded under section 209 from regulating the use and operation of nonroad engines, such as regulations on hours of usage, daily mass emission limits, or sulfur limits on fuel; nor are permits regulating such operations precluded, once the engine is no longer new. EPA believes that states are precluded from requiring retrofitting of used nonroad engines except that states are permitted to adopt and enforce any such retrofitting requirements identical to California requirements which have been authorized by EPA under section 209 of the Clean Air Act.

[FR Doc. 97–33769 Filed 12–29–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 260

[FRL 5942–5]

Withdrawal of Direct Final Rule for Project XL Site-Specific Rulemaking for Molex, Inc., 700 Kingbird Road Facility, Lincoln, NE

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to adverse comment, EPA is withdrawing the direct final rule for the Project XL Site-Specific Rulemaking for Molex, Inc., 700 Kingbird Road Facility, Lincoln, NE. EPA published the direct final rule on November 3, 1997 at 62 FR 59287–59290. As stated in the **Federal Register** document, if adverse or critical comments were received by December 3, 1997 the effective date would be delayed and notice would be published in the **Federal Register**. EPA subsequently received adverse comments on that direct final rule.

EPA will address the comments received in the companion proposal which was published in the November 3, 1997 **Federal Register** at 62 FR 59332–59334. EPA will not institute a second comment period.

DATES: The direct final rule published at 62 FR 59287–59290 is withdrawn as of December 30, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. David Doyle, U.S. Environmental Protection Agency, Region VII, Air, RCRA & Toxics Division, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551–7667.

List of Subjects in 40 CFR Part 260

Environmental protection, Hazardous waste, Treatment storage and disposal facility, Waste determination.

Dated: December 19, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 97–33967 Filed 12–29–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5941–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Cleve Reber Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) Region 6 announces the deletion of the Cleve Reber Superfund Site (the ''Site'') located in Ascension Parish, Louisiana from the National Priorities List (NPL). The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, is codified at Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300. With the concurrence of the State of Louisiana through the Louisiana Department of Environmental Quality (LDEQ), EPA has determined that responsible parties have implemented all appropriate response actions required at the Site (neither the CERCLA-required five-year reviews, nor operation and maintenance of the constructed remedy is considered further response action for these purposes), that all appropriate Hazardous Substance Response Trust Fund (''Fund'') financed response actions under CERCLA have been implemented, and that no further response action by responsible parties is appropriate. Moreover, EPA, with State of Louisiana concurrence through the LDEQ, has determined that Site investigations show that the Site now poses no significant threat to public health or the environment; consequently, pursuant to CERCLA Section 105, and 40 CFR 300.425(e), the Site is hereby deleted from the NPL.

EFFECTIVE DATE: December 30, 1997.

ADDRESSES: Information on the Site is available at the local information repository located at: Ascension Parish Public Library, 500 Mississippi Street, Donaldsonville, Louisiana 70346. Requests for comprehensive copies of documents should be directed formally to the Regional Superfund Management Branch, care of Steve Wyman, (214) 665–2792, United States Environmental Protection Agency, Region 6, Mail Code: 6SF–PO, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Caroline A. Ziegler, Remedial Project Manager, (214) 665–2178, United States Environmental Protection Agency, Region 6, Mail Code: 6SF–LP, 1445 Ross Avenue, Dallas, Texas 75202.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Cleve Reber Superfund Site located near Sorrento in Ascension Parish, Louisiana. A Notice of Intent to Delete for the Site was published October 9, 1997 (62 FR 52674). The closing date for comments on the Notice of Intent to Delete was November 10, 1997. EPA received no comments and therefore no Responsiveness Summary was prepared.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Fund-financed remedial actions. Section 300.425(e)(3) of the NCP, 40 CFR 300.425(e)(3), states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede EPA efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: December 8, 1997.

Lynda F. Carroll,

Acting Deputy Regional Administrator (6RA–D), U.S. EPA Region 6.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the site for Cleve Reber, Sorrento, Louisiana.

[FR Doc. 97–33742 Filed 12–29–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7232]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director for Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria

required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

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

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Maricopa ..	Town of Cave Creek.	November 5, 1997, November 12, 1997, *Foothills Sentinel.*	The Honorable Thomas Augherton, Mayor, Town of Cave Creek, 37622 North Cave Creek Road, Cave Creek, Arizona 85331.	October 20, 1997	040136
Arizona: Maricopa ..	City of El Mirage.	November 5, 1997, November 12, 1997, *Daily News-Sun.*	The Honorable Maggie Reese, Mayor, City of El Mirage, P.O. Box 26, El Mirage, Arizona 85335.	October 20, 1997	040041
Arizona: Maricopa ..	Unincorporated Areas.	November 5, 1997, November 12, 1997, *Daily News-Sun.*	The Honorable Don Stapley, Chairperson, Maricopa County Board of Supervisors, 301 West Jefferson Street, Phoenix, Arizona 85003.	October 20, 1997	040037
Arizona: Maricopa ..	City of Surprise. ..	November 5, 1997, November 12, 1997, *Daily News-Sun.*	The Honorable Joan Schafer, Mayor, City of Surprise, 12425 West Bell Road, Suite D–100, Surprise, Arizona 85374.	October 20, 1997	040053
Arizona: Pima.	City of Tucson.	October 21, 1997, October 28, 1997, *The Arizona Daily Star.*	The Honorable George Miller, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726.	October 1, 1997.	040076
Arizona: Maricopa ..	Town of Wickenburg.	October 21, 1997, October 28, 1997, *The Arizona Republic.*	The Honorable Dallas Gant, Mayor, Town of Wickenburg, 155 North Tegner Street, Suite A, Wickenburg, Arizona 85390.	October 1, 1997.	040056
Arizona: Maricopa ..	Town of Wickenburg.	October 22, 1997, October 29, 1997, *Wickenburg Sun.*	The Honorable Dallas Gant, Mayor, Town of Wickenburg, 155 North Tegner Street, Suite A, Wickenburg, Arizona 85390.	September 26, 1997.	040056
California: Alameda	City of Livermore.	September 10, 1997, September 17, 1997, *The Independent.*	The Honorable Cathie Brown, Mayor, City of Livermore, 1052 South Livermore Avenue, Livermore, California 94550.	August 14, 1997.	060008
California: Riverside	City of Murrieta. ...	October 9, 1997, October 16, 1997, *The Californian.*	The Honorable Gary Smith, Mayor, City of Murrieta, 26442 Beckman Court, Murrieta, California 92562..	September 11, 1997.	060751
California: San Diego.	City of Poway.	October 16, 1997, October 23, 1997, *Poway News Chieftain.*	The Honorable Don Higginson, Mayor, City of Poway, 13325 Civic Center Drive, Poway, California 92064.	January 22, 1998	060702
California: Santa Barbara.	Unincorporated Areas.	October 17, 1997, October 24, 1997, *Santa Barbara News-Press.*	The Honorable Naomi Schwartz, Chairperson, Santa Barbara County Board of Supervisors, 105 East Anapamu Street, Santa Barbara, California 93101.	September 15, 1997.	060331

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Colorado: Adams, Boulder, and Jefferson.	City of Broomfield	September 25, 1997, October 2, 1997, *Broomfield Enterprise Sentinel*.	The Honorable Bill Berens, Mayor, City of Broomfield, One Descombes Drive, Broomfield, Colorado 80038–1415.	September 5, 1997.	085073
Colorado: El Paso ..	City of Colorado Springs.	September 24, 1997, October 1, 1997, *Gazette Telegraph*.	The Honorable Mary Lou Makepeace, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901–1575..	August 20, 1997 ..	080060
Colorado: El Paso ..	City of Colorado Springs.	November 7, 1997, November 14, 1997, *Gazette Telegraph*.	The Honorable Mary Lou Makepeace, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901–1575.	October 9, 1997 ..	080060
Colorado: Douglas	Unincorporated Areas.	October 1, 1997, October 8, 1997, *Douglas County News Press*.	The Honorable Michael Cooke, Chairman, Douglas County Board of Commissioners, 101 Third Street, Castle Rock, Colorado 80104.	August 27, 1997 ..	080049
Colorado: Larimer ..	Unincorporated Areas.	October 3, 1997, October 10, 1997, *Loveland Daily Reporter-Herald*.	The Honorable Jim Disney, Chairman, Larimer County Board of Commissioners, P.O. Box 1190, Fort Collins, Colorado 80522.	September 8, 1997.	080101
Colorado: Boulder ..	City of Longmont	October 24, 1997, October 31, 1997, *Daily Times—Call*.	The Honorable Leona Stoecker, Mayor, City of Longmont, 350 Kimbark Street, Longmont, Colorado 80501.	September 24, 1997.	080027
Colorado: Larimer ..	City of Loveland ..	October 3, 1997, October 10, 1997, *Loveland Daily Reporter—Herald*.	The Honorable Treva Edwards, Mayor, City of Loveland, 500 East Third Street, Loveland, Colorado 80537.	September 8, 1997.	080103
Colorado: Adams, Boulder, and Jefferson.	City of Westminster.	September 25, 1997, October 2, 1997, *Broomfield Enterprise Sentinel*.	The Honorable Nancy M. Heil, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, Colorado 80030.	September 5, 1997.	080008
Idaho: Canyon	Unincorporated Areas.	September 11, 1997, September 18, 1997, *Idaho Press—Tribune*.	The Honorable Abel Vasquez, Chairperson, Canyon County Commissioners, Canyon County Courthouse, 1115 Albany Street, Caldwell, Idaho 83605.	August 26, 1997 ..	160208
Idaho: Canyon	City of Nampa	September 11, 1997, September 18, 1997, *Idaho Press—Tribune*.	The Honorable Winston Goering, Mayor, City of Nampa, 411 Third Street South, Nampa, Idaho 83651.	August 26, 1997 ..	160038
Kansas: Johnson	City of Overland Park.	October 21, 1997, October 28, 1997, *The Legal Record*.	The Honorable Ed Eilert, Mayor, City of Overland park, City Hall, 8500 Santa Fe Drive, Overland Park, Kansas 66212.	September 25, 1997.	200174
Missouri: St. Louis ..	City of Chesterfield.	October 1, 1997, October 8, 1997, *Press Journal* and *Chesterfield Journal*.	The Honorable Nancy Greenwood, Mayor, City of Chesterfield, 922 Roosevelt Parkway, Chesterfield, Missouri 63107–2080.	January 6, 1998 ..	290896
Missouri: St. Louis ..	City of Wildwood	October 1, 1997, October 8, 1997, *Press Journal* and *Chesterfield Journal*.	The Honorable R.W. Marcantano, Mayor, City of Wildwood, 16962 Manchester Road, Wildwood, Missouri 63040.	January 6, 1998 ..	290922
New Mexico: Bernalillo.	City of Albuquerque.	September 26, 1997, October 3, 1997, The Albuquerque Journal.	The Honorable Martin J. Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103–1293.	September 5, 1997.	350002
New Mexico: Bernalillo.	City of Albuquerque.	October 2, 1997, October 9, 1997, The Albuquerque Journal.	The Honorable Martin J. Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103–1293.	September 10, 1997.	350002
New Mexico: Bernalillo.	City of Albuquerque.	October 7, 1997, October 14, 1997, The Albuquerque Journal.	The Honorable Martin J. Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103–1293.	September 15, 1997.	350002
New Mexico: Bernalillo.	City of Albuquerque.	October 24, 1997, October 31, 1997, The Albuquerque Journal.	The Honorable Martin J. Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103–1293.	September 25, 1997.	350002

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
New Mexico: Bernalillo.	City of Albuquerque.	November 4, 1997, November 11, 1997, The Albuquerque Journal.	The Honorable Martin J. Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103–1293.	October 3, 1997 ..	350002
New Mexico: Bernalillo.	Unincorporated Areas.	September 26, 1997, October 3, 1997, The Albuquerque Journal.	The Honorable Tom Rutherford, Chairman, Bernalillo County Board of Commissioners, 2400 Broadway Southeast, Albuquerque, New Mexico 87102.	September 5, 1997.	350001
Oregon: Coos	City of Bandon	October 1, 1997, October 8, 1997, Bandon Western World.	The Honorable Judy Densmore, Mayor, City of Bandon, P.O. Box 67, Bandon, Oregon 97411.	September 5, 1997.	410043
Oregon: Lane	Unincorporated Areas.	October 1, 1997, October 8, 1997, The Register-Guard.	The Honorable Cindy Weeldreyer, Chairman, Lane County, Board of Commissioners, 125 East Eighth Avenue, Eugene, Oregon 97401.	August 29, 1997 ..	415591
Texas: Johnson	City of Burleson ...	November 5, 1997, November 12, 1997, Burleson Star.	The Honorable Rick Roper, Mayor, City of Burleson, City Hall, 141 West Renfro, Burleson, Texas 76028.	October 16, 1997	485459
Texas: Williamson ..	City of Cedar Park	September 10, 1997, September 17, 1997, Hill Country News.	The Honorable Dorothy Duckett, Mayor, City of Cedar Park, City Hall, 600 North Bell Boulevard, Cedar Park, Texas 78613.	August 18, 1997 ..	481282
Texas: Dallas	City of DeSoto	October 2, 1997, October 9, 1997, Best Southwest Focus.	The Honorable Richard Rozier, Mayor, City of DeSoto, 211 East Pleasant Run Road, DeSoto, Texas 75115.	September 11, 1997.	480172
Texas: Collin	City of Frisco	September 19, 1997, September 26, 1997, *Frisco Enterprise*.	The Honorable Kathy Seei, Mayor, City of Frisco, City Hall, P.O. Box 1100, Frisco, Texas 75034.	September 3, 1997.	480134
Texas: Collin	City of Frisco	October 24, 1997, October 31, 1997, *Frisco Enterprise*.	The Honorable Kathy Seei, Mayor, City of Frisco, City Hall, P.O. Box 1100, Frisco, Texas 75034.	September 25, 1997.	480134
Texas: Harris	Unincorporated Areas.	October 23, 1997, October 30, 1997, *Houston Chronicle*.	The Honorable Robert Eckels, Harris County Judge, 1001 Preston Street, Suite 911, Houston, Texas 77002.	September 19, 1997.	480287
Texas: Harris	Unincorporated Areas.	October 24, 1997, October 31, 1997, *Houston Chronicle*.	The Honorable Robert Eckels, Harris County Judge, 1001 Preston Street, Suite 911, Houston, Texas 77002.	October 9, 1997 ..	480287
Texas: Tarrant	City of Hurst	October 1, 1997, October 8, 1997, *Dallas Morning News*.	The Honorable Bill Souder, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, Texas 76054.	September 8, 1997.	480601
Texas: Johnson	Unincorporated Areas.	November 5, 1997, November 12, 1997, *Burleson Star*.	The Honorable Roger Harmon, Johnson County Judge, Johnson County Courthouse, No. 2 Main Street, Cleburne, Texas 76031.	October 16, 1997	480879
Texas: Williamson ..	City of Leander	October 1, 1997, October 8, 1997, *Austin American-Statesman*.	The Honorable Charles Eaton, Mayor, City of Leander, P.O. Box 319, Leander, Texas 78646–0319.	September 3, 1997.	481536
Texas: Montgomery	Unincorporated Areas.	October 22, 1997, October 29, 1997, *Woodlands Sun*.	The Honorable Alan B. Sadler, Montgomery County Judge, 301 North Thompson Street, Suite 210, Conroe, Texas 77301.	September 26, 1997.	480483
Texas: Montgomery	City of Oak Ridge North.	October 22, 1997, October 29, 1997, *Woodlands Sun*.	The Honorable Gary North, Mayor, City of Oak Ridge North, 27326 Robinson Road, Suite 115, Conroe, Texas 77385.	September 26, 1997.	481560
Texas: Collin and Dallas.	City of Plano	September 17, 1997, September 24, 1997, *Plano Star Courier*.	The Honorable John Longstreet, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	September 3, 1997.	480140
Texas: Collin	City of Plano	October 22, 1997, October 29, 1997, *Plano Star Courier*.	The Honorable John Longstreet, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	September 19, 1997.	480140
Texas: Collin and Dallas.	City of Richardson	September 17, 1997, September 24, 1997, *Plano Star Courier*.	The Honorable Gary Slagel, Mayor, City of Richardson, P.O. Box 830309, Richardson, Texas 75083–0309.	September 3, 1997.	480184

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

Dated: December 18, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–33933 Filed 12–29–97; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

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

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Mohave (FEMA Docket No. 7224).	City of Bullhead City.	June 17, 1997, June 24, 1997, *Mohave Valley Daily News.*	The Honorable Norm Hicks, Mayor, City of Bullhead City, 1255 Marina Boulevard, Bullhead City, Arizona 86442.	June 5, 1997	040125
California: Riverside (FEMA Docket No. 7224).	City of Banning	June 20, 1997, June 27, 1997, *The Record-Gazette.*	The Honorable Gary Reynolds, Mayor, City of Banning, P.O. Box 998, Banning, California 92220.	June 5, 1997	060246

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Marin (FEMA Docket No. 7224).	City of Novato	July 1, 1997, July 8, 1997, *Marin Independent Journal*.	The Honorable. Pat Eklund, Mayor, City of Novato, 900 Sherman Avenue, Novato, California 94945.	June 13, 1997	060178
Sonoma (FEMA Docket No. 7224).	City of Petaluma ..	June 17, 1997, June 24, 1997, *Argus Courier*.	The Honorable Patricia Hilligoss, Mayor, City of Petaluma, P.O. Box 61, Petaluma, California 94953.	June 2, 1997	060379
Santa Clara (FEMA Docket No. 7224).	City of San Jose ..	July 1, 1997, July 8, 1997, *San Jose Mercury News*.	The Honorable Susan Hammer, Mayor, City of San Jose, 801 North First Street, Room 600, San Jose, California 95110.	June 12, 1997	060349
North Dakota:					
Dunn (FEMA Docket No. 7224).	City of Halliday	June 20, 1997, June 27, 1997, *Dunn County Herald*.	The Honorable Leo Lesmeister, Mayor, City of Halliday, P.O. Box 438, Halliday, North Dakota 58642.	June 9, 1997	380029
Dunn (FEMA Docket No. 7224).	Unincorporated Areas.	June 20, 1997, June 27, 1997, *Dunn County Herald*.	The Honorable Orris Bang, Chairman, Dunn County Board of Commissioners, Dunn County Auditor's Office, P.O. Box 105, Manning, North Dakota 58642.	June 9, 1997	380026
Oklahoma:					
Oklahoma (FEMA Docket No. 7224).	City of Edmond ...	June 12, 1997, June 19, 1997, *Edmond Evening Sun*.	The Honorable Bob Rudkin, Mayor, City of Edmond, P.O. Box 2970, Edmond, Oklahoma 73083.	May 28, 1997	400252
Tulsa (FEMA Docket No. 7224).	City of Tulsa	June 17, 1997, June 24, 1997, *Tulsa World*.	The Honorable M. Susan Savage, Mayor, City of Tulsa, 200 Civic Center, Tulsa, Oklahoma 74103.	May 23, 1997	405381
Texas:					
Dallas (FEMA Docket No. 7224).	City of Carrollton	June 20, 1997, June 27, 1997, *Metrocrest News*.	The Honorable Milburn Gravley, Mayor, City of Carrollton, P.O. Box 110535, Carrollton, Texas 75011–0535.	June 4, 1997	480167
Tarrant (FEMA Docket No. 7224).	City of Grapevine	June 19, 1997, June 26, 1997, *The Grapevine Sun*.	The Honorable William D. Tate, Mayor, City of Grapevine, 200 South Main, Grapevine, Texas 76051.	June 4, 1997	480598
Kerr (FEMA Docket No. 7193).	City of Ingram	June 12, 1996, June 19, 1996, *The Kerrville Daily Times*.	The Honorable Nina Jane Bird Raymer, Mayor, City of Ingram, 409 Highway 27 West, Ingram, Texas 78025.	May 31, 1996	481592
Kerr (FEMA Docket No. 7193).	City of Kerrville	June 12, 1996, June 19, 1996, *The Kerrville Daily Times*.	The Honorable Charles P. Johnson, Mayor, City of Kerrville, 800 Junction Highway, Kerrville, Texas 78028–5069.	May 31, 1996	480420
Kerr (FEMA Docket No. 7193).	Unincorporated Areas.	June 12, 1996, June 19, 1996, *The Kerrville Daily Times*.	The Honorable Robert A. Denson, Kerr County Judge, 700 Main, Kerrville, Texas 78028.	May 31, 1996	480419
Kaufman (FEMA Docket No. 7224).	City of Terrell	July 1, 1997, July 8, 1997, *Terrell Tribune*.	The Honorable Don L. Lindsay, Mayor, City of Terrell, P.O. Box 310, Terrell, Texas 75160.	June 17, 1997	480416

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

Dated: December 18, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–33932 Filed 12–29–97; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

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

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
ARKANSAS	
Central City (town), Sebastian County (FEMA Docket No. 7222)	
Vache Grasse Creek:	
At State Highway 255	*399
Maps are available for inspection at the Town of Central City Town Hall, 1101 Highway 255, Central City, Arkansas.	
Stuttgart (city) and Arkansas County (Unincorporated areas) (FEMA Docket No. 7222)	
Bull Ditch:	
Approximately 6,700 feet downstream of Oak Street (extended)	[1]*211
Just upstream of Vine Street	[2]*213
Lateral 1:	
At confluence with Bull Ditch	[2]*212
Approximately 50 feet downstream of Park Avenue	[2]*213
Lateral 1A:	
At confluence with Lateral 1	[2]*213
Ditch 7:	
At confluence with Ditch 7A	[2]*198
Approximately 950 feet upstream of St. Louis Southwestern Railroad	[2]*200
Ditch 7A:	
Just upstream of County Road	[1]*198
Approximately 8,100 feet upstream of County Road	[2]*206
Ditch 7B:	
At confluence with Ditch 7	[2]*198
Just upstream of Buerkle Street	[2]*203
Elm Prong:	
Just upstream of Route 130	[1]*212
Mill Bayou:	
Just upstream of Route 130 (downstream crossing)	[1]*212
Approximately 1,100 feet upstream of Route 130 (upstream crossing)	[2]*214
Ditch 3B:	
At confluence with Mill Bayou	[1]*213
Approximately 1,000 feet upstream of McCraken Street	[2]*215
Main Ditch:	
Approximately 9,100 feet downstream of Railroad Spur	[1]*201
Just downstream of Railroad Spur	[1]*211
Just upstream of 19th Street East	[2]*214
Lateral A:	
At confluence with Main Ditch	[2]*214
Stuttgart King Bayou Ditch:	
Just downstream of County Road	[1]*197
Just upstream of Fourth Street	[2]*202
Maps are available for inspection at the City of Stuttgart Water Department, 612 South College, Stuttgart, Arkansas.	
Maps are available for inspection at the Arkansas County Courthouse, 101 Court Square, Dewitt, Arkansas.	
[1] Affects Arkansas County.	
[2] Affects the City of Stuttgart.	
Sebastian County (Unincorporated areas) (FEMA Docket No. 7222)	
Vache Grasse Creek:	
At Old Military Road (State Highway 256)	*399
Maps are available for inspection at the County Courthouse, 35 South Sixth Street, Fort Smith, Arkansas.	
CALIFORNIA	
Lake County (Unincorporated areas) (FEMA Docket No. 7218)	
Putah Creek:	
Approximately 8,450 feet downstream of confluence of Coyote Creek	*940
Approximately 200 feet downstream of confluence of Coyote Creek	*956
Approximately 500 feet downstream of State Highway 29	*964
Putah Creek Left Overbank:	
At southeast meeting of Mountain Meadow Roads North and South	*953
Approximately 700 feet upstream of confluence of Coyote Creek, east of levee	*955
Coyote Creek:	
Approximately 1,400 feet downstream of Hartman Road	*957

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 300 feet downstream of Hartman Road	*961
Butts Canyon Creek:	
Approximately 3,600 feet downstream of Loconomi Road	*1,082
Approximately 4,100 feet upstream of Butts Canyon Road	*1,115
Copsey Creek:	
At confluence with Cache Creek	*1,331
Approximately 100 feet upstream of Morgan Valley Road	*1,348
Approximately 950 feet upstream of Morgan Valley Road	*1,351
Herdon Creek:	
At confluence with Cache Creek	*1,331
Just upstream of Bonham Road	*1,345
Approximately 4,700 feet upstream of Bonham Road	*1,371
Long Valley Creek:	
Approximately 150 feet downstream of New Long Valley Road	*1,099
Approximately 9,550 feet upstream of Old Long Valley Road	*1,181
Long Valley Creek—Right Overbank Split Flow:	
At convergence with main channel, approximately 1,540 feet upstream of Old Long Valley Road	*1,145
At divergence from main channel, approximately 4,850 feet upstream of Old Long Valley Road	*1,169
Wolf Creek:	
At confluence with North Fork Cache Creek	*1,129
Approximately 1,350 feet upstream of Wolf Creek Road crossing, upstream of dam	*1,230
Morrison Creek:	
Just upstream of State Highway 20	*1,332
Approximately 540 feet upstream of Foothill Road	*1,368
Eighth Avenue Drain and North Tributary:	
Just downstream of State Highway 20	*1,332
Just downstream of Foothill Road	*1,385
Eighth Avenue Drain—South Tributary:	
Approximately 50 feet downstream of Ninth Avenue	*1,349
Just upstream of Foothill Road	*1,384
17th Avenue Drain:	
Just upstream of State Highway 20	*1,332
Approximately 890 feet upstream of Trailer Park upstream crossing	*1,373
Thurston Creek:	
Approximately 5,970 feet downstream of Soda Bay Road	*1,765
Approximately 4,150 feet upstream of Soda Bay Road, second upstream crossing	*1,869
Maps are available for inspection at the Lake County Department of Public Works, Lake County Courthouse, 255 North Forbes Street, Room 309, Lakeport, California.	
Palmdale (city) and Los Angeles County (Unincorporated areas) (FEMA Docket No. 7222)	
Anaverde Creek:	
Just downstream of Antelope Valley Freeway (California State Highway 14)	*2,742
Approximately 5,000 feet upstream of Tierra Subida, at an unnamed road	*2,876
Just upstream of Leona Siphon	*2,929
Maps are available for inspection at the City of Palmdale, 712 East Palmdale Boulevard, Palmdale, California.	
Maps are available for inspection at 23920 Valencia Boulevard, Santa Clarita, California.	
Redding (city) and Shasta County (Unincorporated areas) (FEMA Docket No. 7222)	
Olney Creek:	
Just upstream of Anderson-Cottonwood Irrigation District Canal	*481
Approximately 100 feet upstream of Texas Springs Road	*530
Stillwater Creek:	
At Dersch Road	*409
Approximately 9,100 feet upstream of Dersch Road	*437
At Rancho Road	*475
Approximately 500 feet upstream of Rancho Road	476
Maps are available for inspection at the City of Redding Development Services Department, 760 Parkview Avenue, Redding, California.	
Maps are available for inspection at the Shasta County Department of Public Works, 1855 Placer Street, Redding, California.	
KANSAS	
Fort Scott (city), Bourbon County (FEMA Docket No. 7222)	
Buck Run:	
At Wall Street	*799
Just upstream of Tenth Street	*831
Approximately 1,200 feet upstream of 23rd Street	*895
Buck Run East Fork:	
At confluence with Buck Run	*841
Just upstream of St. Louis-San Francisco Railroad	*870
Buck Run Tributary:	
At confluence with Buck Run	*814
Approximately 520 feet upstream of Wilson Street	*851
Maps are available for inspection at the City of Fort Scott City Hall, 1 East Third Street, Fort Scott, Kansas.	
Lyons (city), Rice County (FEMA Docket No. 7206)	
Salt Creek:	
Approximately 3,000 feet downstream of American Road	*1,654
At Second Street	*1,686
Surprise Creek:	
Approximately 200 feet downstream of American Road	*1,662
At Second Street	*1,686
Maps are available for inspection at City Hall, 217 East Avenue South, Lyons, Kansas.	
NEBRASKA	
Otoe County (Unincorporated areas) (FEMA Docket No. 7222)	
Missouri River:	
Approximately 3.8 miles downstream of confluence of Camp Creek	*913
Approximately 23.1 miles upstream of confluence of Camp Creek	*940
Maps are available for inspection at the Otoe County Courthouse, 1021 Central Avenue, Nebraska City, Nebraska.	
OREGON	
Gold Beach (city), Curry County (FEMA Docket No. 7218)	
Pacific Ocean:	
Along shoreline, just south of mouth of Cunniff Creek	*15
Along shoreline, approximately 3,800 feet north of mouth of Hunter Creek	*20
Maps are available for inspection at the City of Gold Beach City Hall, 29592 Ellensburg Avenue, Gold Beach, Oregon.	
SOUTH DAKOTA	
Custer (city), Custer County (FEMA Docket No. 7218)	
French Creek:	
At eastern corporate limits, approximately 400 feet upstream of County Road 394	*5,270
Downstream of U.S. Highway 16A	*5,333
Laughing Water Creek:	
At confluence with French Creek	*5,292
At unnamed road approximately 250 feet upstream of Clay Street	*5,338
Highway 385 Tributary:	

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
At confluence with French Creek	*5,318
Approximately 2,700 feet above mouth	*5,347
Maps are available for inspection at the City of Custer City Hall, 622 Crook Street, Custer, South Dakota.	
Custer County (Unincorporated areas) (FEMA Docket No. 7218)	
French Creek:	
Just upstream of Sewage Disposal Plant Road	*5,252
Just upstream of County Road 394	*5,269
Just downstream of an unnamed road approximately 580 feet upstream of County Road 395	*5,345
Highway 385 Tributary:	
Approximately 1,000 feet upstream from confluence with French Creek	*5,327
At unnamed road approximately 4,400 feet upstream of confluence with French Creek	*5,369
Maps are available for inspection at the Custer County Courthouse, 420 Mt. Rushmore Road, Custer, South Dakota.	
TEXAS	
Denton County (and Incorporated areas) (FEMA Docket No. 7222)	
Clear Creek:	
Just upstream of Interstate Highway 35	*620
Just upstream of FM 455	*669
Approximately 24,100 feet upstream of Waide Road	*698
Duck Creek:	
Approximately 4,450 feet downstream of Duck Creek Road	*623
Just upstream of Sam Bass Road	*691
Milam Creek:	
Approximately 1,450 feet above mouth	*561
Approximately 540 feet upstream of Interstate 35 southbound frontage road	*666
North Hickory Creek:	
Just upstream of FM 156 (First Street extended)	*675
Approximately 600 feet upstream of Plainview Road	*686
Elizabeth Creek:	
Approximately 6,200 feet above mouth	*571
Approximately 130 feet upstream of John Day Road	*731
Maps are available for inspection at the Denton County Government Center, Department of Planning, 306 North State Route 288, Denton, Texas.	
Maps are available for inspection at the City of Denton, City Hall West, 221 North Elm, Denton, Texas.	
Maps are available for inspection at the City of Roanoke City Hall, 201 Bowie Street, Roanoke, Texas.	
Highland Village (city), Denton County (FEMA Docket No. 7222)	
Hickory Creek Arm Tributary 1:	
At Sellmeyer Lane	*537
At Tanglewood Lane	*552
Hickory Creek Arm Tributary 2:	
At confluence with Hickory Creek Arm Tributary 1	*539
At Lakevista West	*544
Copperas Branch:	
Approximately 670 feet downstream of Cuero Place, at the Cities of Highland Village and Lewisville corporate limits	*569
Approximately 710 feet upstream of Sellmeyer Lane	*580
Maps are available for inspection at the City of Highland Village City Hall, 1800 FM 407, Highland Village, Texas.	
Lewisville (city), Denton County (FEMA Docket No. 7222)	
Copperas Branch:	
Along Aspen Drive, 300 feet north of intersection with Maxwell Drive	*569
Maps are available for inspection at the City of Lewisville City Hall, 1197 West Main Street, Lewisville, Texas.	
WASHINGTON	
King County (and Incorporated areas) (FEMA Docket No. 7222)	
North Fork Issaquah Creek:	
At confluence with Issaquah Creek	*51
Approximately 150 feet upstream of Southeast 62nd Street	*56
Approximately 570 feet upstream of 66th Street	*90
Bear Creek:	
Approximately 100 feet upstream of State Route 202	*42
Approximately 100 feet upstream of Northeast Novelty Hill Road	*62
Approximately 80 feet upstream of Avondale Road	*90
Evans Creek:	
At confluence with Bear Creek	*47
Approximately 0.74 mile upstream of confluence with Bear Creek	*55
South Fork Skykomish River:	
At Snohomish-King County line, approximately 6 miles downstream of Burlington Northern Railroad	*748
Approximately 100 feet downstream of Fifth Street, in the Town of Skykomish	*926
Approximately 0.52 mile upstream of U.S. Highway 2 (Northeast Stevens Pass Highway)	*1,039
Middle Fork Snoqualmie River:	
Approximately 0.35 mile downstream of Mount Si Road	*467
Approximately 0.44 mile upstream of Mount Si Road	*495
Approximately 3.57 miles upstream of Mount Si Road	*629
North Fork Snoqualmie River:	
At mouth, approximately 0.36 mile downstream of 428th Avenue Southeast	*427
Approximately 2.06 miles upstream of 428th Avenue Southeast	*482
South Fork Skykomish River:	
Approximately 200 feet upstream of confluence with Maloney Creek	*922
Approximately 0.46 mile upstream of Fifth Street North	*940
North Creek:	
At confluence with Sammomish River	*22
At 208th Street Southeast	*122
Maps are available for inspection at the King County Department of Development and Environmental Services, 3600 136th Place Southeast, Bellevue, Washington.	
Maps are available for inspection at the Town of Skykomish, 119 Fourth Street North, Skykomish, Washington.	
Maps are available for inspection at the City of Issaquah Planning Department, 130 East Sunset Way, Issaquah, Washington.	
Maps are available for inspection at the City of Redmond, 15670 Northeast 85th Street, Redmond, Washington.	
Selah (city), Yakima County (FEMA Docket No. 7218)	
Yakima River:	
Approximately 700 feet upstream of Selah Highway Bridge	*1,088
Approximately 7,700 feet upstream of Selah Highway Bridge	*1,098
Maps are available for inspection at the City of Selah Building Department, City Hall, 115 West Naches Avenue, Selah, Washington.	

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Union Gap (city), Yakima County (FEMA Docket No. 7218)	
Yakima River:	
Just upstream of Ahtanum Road at the corporate limits	*971
Approximately 3,700 feet upstream of Ahtanum Road at the corporate limits	*982
Maps are available for inspection at the City of Union Gap Department of Community Development, City Hall, 102 West Ahtanum Road, Union Gap, Washington.	
Yakima (city), Yakima County (FEMA Docket No. 7218)	
Yakima River:	
Approximately 1.1 miles downstream of East Nob Hill Road	*986
Approximately 1.8 miles upstream of Burlington Northern Railroad	*1,083
Maps are available for inspection at the City of Yakima Department of Community and Economic Development, City Hall, 129 North Second Street, Yakima, Washington.	
Yakima County (Unincorporated areas) (FEMA Docket No. 7218)	
Yakima River:	
Approximately 2,200 feet downstream of Interstate Highway 82 (near Wapato Dam)	*945
Approximately 600 feet upstream of confluence with Selah Creek	*1,152
Maps are available for inspection at the Yakima County Planning Department, Yakima County Courthouse, Room 417, 128 North Second Street, Yakima, Washington.	
WYOMING	
Sheridan County (Unincorporated areas) (FEMA Docket No. 7222)	
Big Goose Creek:	
Approximately 1,800 feet downstream of State Highway 388	*3,697
Approximately 4 miles upstream of Works Street	*3,800
Little Goose Creek:	
Approximately 1,250 feet downstream of Brundage Lane	*3,782
Just upstream of County Road 66	*3,836
Tongue River:	
Approximately 2 miles downstream of Wolf Creek Road, at the north section line of Section 20	*3,728
Just upstream of Wolf Creek Road	*3,761
Approximately 3 miles upstream of Wolf Creek Road	*3,776
Fivemile Creek:	
At township line between Townships 85 and 86 West	*3,776
Approximately 800 feet upstream of township line between Townships 85 and 86 West	*3,780
Maps are available for inspection at the Sheridan County Engineering Department, 224 South Main Street, Sheridan, Wyoming.	

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

Dated: December 18, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–33930 Filed 12–29–97; 8:45 am]

BILLING CODE 6718–04–P

LEGAL SERVICES CORPORATION

45 CFR Part 1643

Restriction on Assisted Suicide, Euthanasia, and Mercy Killing

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule is intended to implement a new statutory restriction that amends the Legal Services Corporation Act and is applicable to recipients of grants from the Legal Services Corporation. The restriction prohibits the use of LSC funds by recipients for legal or other assistance that would cause, assist in, advocate for, or fund assisted suicide, euthanasia, or mercy killing.

DATES: This final rule is effective on January 29, 1998.

FOR FURTHER INFORMATION CONTACT: Office of the General Counsel, (202) 336–8817.

SUPPLEMENATARY INFORMATION: The Assisted Suicide Funding Restriction Act of 1997 (''Assisted Suicide Act'' or ''Act''), Pub. L. 105–12, was enacted and became effective on April 30, 1997. Several provisions of the Assisted Suicide Act expressly apply to the Legal Services Corporation (''LSC'' or ''Corporation''), one of which amends Section 1007(b) of the LSC Act, 42 U.S.C. 2996f(b)(11). This rule is intended to implement this legislation as it applies to the Corporation and its recipients.

On September 19, 1997, the Corporation's Operations and Regulations Committee (''Committee'') of the LSC Board of Directors (''Board'') held public hearings in Washington, DC, on a draft proposed rule in Washington, DC, and, after making revisions to the draft, adopted a proposed rule for publication in the **Federal Register** for public notice and comment. The Corporation received two timely comments, one from the Advocacy Training/Technical Assistance Center (''ATTAC'') and another from the National Legal Center for the Medically Dependent & Disabled, Inc. (''Legal Center''). Both comments stated that, in general, the proposed rule fairly and accurately reflected the intent of Congress in enacting the Assisted Suicide Act. ATTAC, however, recommended including several clarifying provisions in the final rule and questioned whether the recordkeeping provision should be less burdensome. The comment from the Legal Center urged that the final rule address the effect of the rule on free speech activities in a public forum. These comments are addressed more specifically in the section-by-section analysis below.

On November 14, 1997, the Committee met in Washington, DC, to consider public comment and act on a draft final rule. The Committee made several clarifying changes to the proposed rule and recommended adoption of the revised rule to the Board. The Board adopted the recommended rule as final on November 15, 1997.

Background and Summary of Law

The stated purpose of the Assisted Suicide Act is to maintain current Federal policy that Federal funds not be used to support, assist in, or advocate for assisted suicide, euthanasia or mercy killing. H. Rep. No. 46, 105th Cong., 1st Sess. at 3 (April 8, 1997). Although assisted suicide, euthanasia and mercy killing are illegal in almost all states, Congress was concerned that pending litigation might change the status quo and wanted to make it clear by legislation that, regardless of a change in State law, Federal policy would remain the same. H. Rep. at 3–4. Subsequent to the passage of the Act, the Supreme Court upheld as constitutional laws in the States of New York and Washington which prohibit assisted suicide and euthanasia. See *Vacco* v. *Quill,* 117 S. Ct. 2293 (1997); *Washington* v. *Glucksberg,* 117 S. Ct. 2302 (1997). The State of Oregon, on the other hand, adopted an initiative in 1996 that legalized physician-assisted suicide for

competent, terminally ill adults. H. Rep. at 4. Court challenges and a recent voter initiative effort have so far failed to overturn the law and, absent a successful legal challenge, the law is poised to go into effect. See Washington Post, Nov. 5, 1997 at A–1, col. 4; *Lee* v. *Oregon*, 107 F.3d 1382 (9th Cir. Feb. 27, 1997); Certiorari denied, 1997 WL 274930, _____ S. Ct. _____, (Oct. 14, 1997) (No. 96–1824).

The Assisted Suicide Act applies to numerous Federally funded health care programs and facilities, such as Medicare, Medicaid, CHAMPUS and the veterans and military health care systems. It also applies to certain legal aid and advocacy programs, including the Legal Services Corporation.

Section 9 of the Assisted Suicide Act amends Section 1007(b) of the LSC Act to provide that ''No funds made available by the Corporation under this title, either by grants or contract, may be used * * * to provide legal assistance in a manner inconsistent with the Assisted Suicide Funding Restriction Act of 1997.'' Section 5 of the Assisted Suicide Act sets out the restrictions as they apply to LSC funds by generally prohibiting the use of appropriated funds for legal or other assistance for the purpose of (1) securing or funding any activity or service that would assist in or cause the suicide, euthanasia, or mercy killing of an individual; (2) compelling any person or entity to provide funding or service for such purposes; or (3) asserting or advocating a legal right to assisted suicide, euthanasia or mercy killing. Finally, Section 3(b) clarifies what activities are not included within the restrictions.

This final rule implements those sections of the Act that apply to the Corporation. A section-by-section analysis is set out below.

Section-by-Section Analysis

Section 1643.1 Purpose

The purpose of this rule is to ensure that LSC recipients do not use any LSC funds to engage in legal assistance activities inconsistent with the Assisted Suicide Act.

Section 1643.2 Definitions

The definitions in this section are all based primarily on the House Report for the Assisted Suicide Act and the common dictionary definitions of the terms. H. Rep. at 12; Random House Webster's College Dictionary (1997) (''Webster's'').

Assisted suicide is defined as providing any means to another person to enable or assist that person to commit suicide. See Webster's at 80 (suicide aided by a person, esp. a physician, who organizes the logistics of the suicide). For example, if a doctor provided a person with a lethal drug overdose so that the person could commit suicide by ingesting the lethal overdose, the action of providing the drug overdose would constitute assisted suicide.

Euthanasia and *mercy killing* have the same meaning. The consistent use of both terms throughout the Act might suggest that they are two different activities. However, both the House Report and Webster's Dictionary give them the same meaning. Apparently, State laws commonly use the terms together or use one term or the other to mean the same activity.[1] *Euthanasia* and *mercy killing* are defined as the use of active means by one person to cause the death of another person for reasons assumed to be merciful, regardless of whether the person who is killed consents to be killed. According to the House Report, such a death is often considered merciful because the person is deemed to be dying or suffering or the person is considered to be a burden on family, community or society. H. Rep. at 12.

Suicide is defined as the taking of one's own life voluntarily and intentionally and is included in this rule to clarify its meaning within the term *assisted suicide.*

Section 1643.3 Prohibition

This section prohibits the use of LSC funds by recipients for legal or other assistance for those activities delineated therein.

Paragraph (a) prohibits a recipient from using LSC funds for any action that would cause or assist in causing the suicide, euthanasia or mercy killing of an individual. This would include, for example, providing a client with assistance to obtain the means of death or providing a client the financial means for death by suicide or euthanasia.

Paragraph (b) prohibits the use of LSC funds for compelling any person or private or governmental entity to engage in the activities prohibited in paragraph (a). For example, a recipient could not provide legal assistance to a client for the purpose of suing a public or private hospital to permit the client to receive assistance in committing suicide in its facilities.

Paragraph (c) implements Section 5(a)(3) of the Assisted Suicide Act and prohibits asserting or advocating a legal right to cause or assist in causing the suicide, euthanasia, or mercy killing of an individual. This means, for example, that legal assistance may not be provided to assert that a law or regulation prohibiting or regulating assisted suicide, euthanasia, or mercy killing is unconstitutional or otherwise in violation of the law. It also prohibits any lobbying efforts to promote or advocate for passage of legislation that would legalize assisted suicide, euthanasia, or mercy killing.

The comment from the Legal Center urged the Corporation to clarify that paragraph (c) should not be construed in a way that is inconsistent with constitutional protections for free speech in the context of a public forum as set out in *Rust* v. *Sullivan, 500 U.S. 173(1991)* and *Rosenberger* v. *Rectors and Visitors of the University of Virginia,* 115 S.Ct. 2510 (1995), because a failure to do so might jeopardize the entire regulation. The Legal Center pointed out that when President Clinton signed the Assisted Suicide Act, he issued a statement on Section 5(a)(3) of the Act that directed executive agencies to implement the legislation in a way that would protect the free exchange of ideas in public forums. The President's statement provided that:

> The Department of Justice has advised * * * that a broad construction of this section would raise serious First Amendment concerns. I am therefore instructing the Federal agencies that they should construe section 5(a)(3) only to prohibit Federal funding for activities and services that provide legal assistance for the purpose of advocating a right to assisted suicide, or that have as their purpose the advocacy of assisted suicide, and not to restrict Federal funding for other activities, such as those that provide forums for the free exchange of ideas. In addition, I emphasize that section 5(a)(3) imposes no restriction on the use of nonfederal funds.

Statement by the President, April 30, 1997; see also 143 Cong. Rec. S3264–65 (daily ed. April 16, 1997) (letter of Andrew Fois, Asst. Attorney General, Department of Justice). Although the Legal Center recognized that the Corporation is not subject to executive orders, it suggested three possible actions to be taken by the Corporation depending on the applicability of the law on public forums to LSC-funded legal aid programs. If it is possible for LSC recipients to use LSC funds to create a public forum, the Legal Center recommended that the rule should include an express public forum exception. However, if LSC funds may

[1] The terms are found in statues from 45 States and the District of Columbia, which disapprove of euthanasia, mercy killing, suicide, or assisted suicide in their natural death/living will statutes, or in their durable power of attorney for health care acts. For citations to these statutes, see Relief or Reproach? Euthanasia Rights in the Wake of Measure 16, 74 Oregon Law Review, 449, 462 notes 44 and 45 (Summer 1995).

not be used to create public forums, the Legal Center suggested that this limitation should be made clear in the commentary to the final rule. Finally, the Legal Center suggested that, even if public forums may not be financed with LSC funds under current law, perhaps the rule should include an exception in case the law should change in the future.

Because LSC programs are not public forums and LSC funds may not be used to create public forums, the Board adopted the second suggestion made by the Legal Center. The Board did not adopt the third suggestion because an express public forum exception might inadvertently suggest to recipients that LSC funds may be used for public forum activities.

The cases cited in the Legal Center's comment dealt with traditional public forums, such as universities, parks, and public streets, which are forums ''created by government designation as a place or channel of communication for use by the public at large for assembly and speech.'' *Cornelius* v. *NAACP Legal Defense & Educational Fund, Inc.,* 473 U.S. 788, 802 (1985). *Rosenberger* involved a state university's efforts to exclude religious groups from a general funding program intended to foster a diverse range of student publications. *Rust,* by contrast, involved government support for a limited range of family planning services; although those services did involve speech, the purpose of the program was to provide the services to clients rather than promote a diversity of views.

The LSC program is a nonpublic forum much like the Title X program in *Rust.* LSC's enabling statute and its regulations sharply limit advocacy activities and define LSC's purpose as meeting the basic legal needs of the poor rather than facilitation of expression. Nor do LSC grantees create public forums when they conduct training sessions or develop training manuals on end-of-life issues relating to advance directives or powers of attorney for health care; indeed, LSC's training restriction prohibits recipients from using any funds to advocate particular public policies or to train participants to engage in restricted activities.[2] These limitations on the scope of the LSC program bar any inference that, in funding that program, Congress has attempted to create a public forum.

[2] This restriction was recently upheld against constitutional challenge in *Legal Aid Society of Hawaii* v. *Legal Services Corporation,* Civ. No. 97–00032 (D. Hawaii, Aug. 1, 1997).

Section 1643.4 Applicability

Paragraph (a) of this section is based on Section 3(b) of the Assisted Suicide Act, which clarifies that the Act's restrictions do not apply to or affect any limitation relating to certain activities. Subparagraphs (a)(1) through (a)(3) clarify that the restrictions are intended to include the use of active means of causing death, such as by lethal injection or the provision of a lethal oral drug overdose, but do not apply to or affect any limitation relating to decisions to withhold or withdraw medical care, medical treatment, nutrition, or hydration. Nor do the restrictions apply to or affect limitations relating to abortion activities. This means that the Corporation's current restrictions on abortion activities are unaffected by this rule and are still in full force and effect in their current status, see 45 CFR § 1610.2(a)(7) and (b)(10). To clarify the meaning of the phrase ''or affect any limitation relating to'' included in the introductory language of paragraph (a) in the proposed rule, the Board deleted the phrase from the beginning of the paragraph and instead added a sentence at the end of the paragraph, which now provides that § 1643.3 shall not be interpreted as limiting or interfering with the operation of any other statute or regulation governing the activities listed in § 1643.3(a)

LSC recipients traditionally do not become involved in legal assistance in the area of assisted suicide or euthanasia, but they do provide legal assistance to clients in preparing advance directives, such as living wills and powers of attorney. The preparation of such documents will generally be unaffected by this rule, because the rule's restriction applies only to active means of causing death. Advance directives normally apply to passive actions, such as withholding or withdrawing nutrition or medical care. Only if an advance directive seeks to secure death by active means, that is, by assisted suicide, euthanasia or mercy killing, would it be restricted by this rule. Although this is unlikely, because such actions are illegal in most States, it may now be permissible in Oregon, where the law permits assisted suicide. Recipients in Oregon, therefore, should take special care to ensure that any legal assistance they provide regarding advance directives is consistent with this rule.

ATTAC urged the Corporation to include language in the rule itself to reflect the preamble discussion of advance directives. The Board did not agree. Advance directives constitute one example of activity already implicated by the language of paragraph (a) and a separate reference to advance directives in unnecessary and might cause confusion. The preamble discussion is intended to state how the corporation will interpret paragraph (a) as to advance directives and provides sufficient guidance to recipients. The Corporation routinely provides the preamble along with the text of final published rules to recipients as a matter of practice.

Subparagraph (a)(4) clarifies that the restriction does not include treatment aimed solely at alleviating suffering, even if the treatment has the unintended consequence of risking or shortening life. Thus, The restriction would not include the administration of morphine for the purpose of alleviating pain, even if its use might risk causing death or risk shortening life because it might also have the side effect of suppressing respiratory functions. The restriction, however, would include treatment that has a two-fold purpose of alleviating pain or discomfort and causing death.

Paragraph (a)(5) was added in response to a comment from ATTAC which urged the Corporation to clarify that the prohibition in § 1643.4 does not prohibit recipients from providing information on applicable law on assisted suicide, euthanasia or mercy killing, or from counseling clients about other forms of health care, such as hospice care. The Board agreed that permitting recipients to provide factual information regarding the law in these areas is consistent with the Assisted Suicide Act. The House Report makes this clear by explaining:

> An advocacy program could provide factual answers to a client's questions about State law on assisting suicide, since that alone would not be providing assistance for such purposes. Similarly, these provisions do not prohibit such programs from counseling clients about alternatives to assisted suicide, such as pain management, mental health care and community-based services for people with disabilities.

H. Rep. at 18–19. The Board decided not to include a reference in paragraph (5) to counseling activities, as suggested by ATTAC, because it is already implied by the terms of the rule that recipients are not prohibited from providing legal counsel in such areas as hospice care, mental health care or services for the disabled, as long as such assistance does not include activities prohibited by § 1643.3 of this part.

Paragraph (b) clarifies that the prohibition on LSC funds does not apply to a recipient's non-LSC funds. Section 5 of the Assisted Suicide Act expressly applies the restriction only to

''funds appropriated by Congress.'' This is also reflected in the House Report, which provides:

> Section 5 is not intended to have the effect of de-funding an entire program, such as a Legal Services program or other legal or advocacy program, simply because some State or privately funded portion of that program may advocate for or file suit to compel funding or services for assisted suicide. This section is intended only to restrict Federal funds from being used for such activities.

House Report at 19–20. This distinction is particularly important for recipients in the State of Oregon, where the law now permits assisted suicide. If recipients in Oregon undertake any of the activities prohibited by this part, they must be able to demonstrate that no LSC funds supported the activities.

In addition, recipients may have other Federal grants restricted by various provisions of the Assisted Suicide Act. This paragraph does not affect the recipient's obligation to comply with all the terms of such a grant. Although this rule restricts only the use of LSC grant funds, a recipient's other funds are still subject to any restrictions that are included in other grant agreements.

Section 1643.5 Recipient Policies and Recordkeeping

The proposed rule required recipients to establish written policies and procedures to guide the recipient's staff to ensure compliance with this rule and to maintain sufficient documentation to demonstrate compliance with this part. ATTAC urged the Corporation to revise this section to minimize the recordkeeping burden of recipients and noted that the preamble to the proposed rule stated that ''the type of recordkeeping necessary to demonstrate compliance with this rule would be documentation that only non-LSC funds were used for any activities prohibited by this rule.'' ATTAC interpreted this statement as requiring recipients to create new records to ensure compliance. The Board did not revise the recordkeeping requirement because it is not new to recipients. To comply with this requirement, recipients need only follow their normal accounting standards and procedures.

The Board did, however, delete the requirement that recipients adopt procedures because no procedures should be necessary for an activity in which the recipients must not engage. It is sufficient for recipients to establish a policy prohibiting engagement in the prohibited activities.

List of Subjects in 45 CFR Part 1643

Grants, Lobbying, Health care, Legal Services.

For reasons set forth in the preamble, LSC amends CS Chapter XVI of Title 45 by adding part 1643 as follows:

PART 1643—RESTRICTION ON ASSISTED SUICIDE, EUTHANASIA, AND MERCY KILLING

Sec.
1643.1 Purpose.
1643.2 Definitions.
1643.3 Prohibition.
1643.4 Applicability.
1643.5 Recipient policies and recordkeeping.

Authority: Pub. L. 105–12; 42 U.S.C. 2996f(b)(11).

§ 1643.1 Purpose.

This part is intended to ensure that recipients do not use any LSC funds for any assisted suicide, euthanasia or mercy killing activities prohibited by this part.

§ 1643.2 Definitions.

(a) *Assisted suicide* means the provision of any means to another person with the intent of enabling or assisting that person to commit suicide.

(b) *Euthanasia (or mercy killing)* is the use of active means by one person to cause the death of another person for reasons assumed to be merciful, regardless of whether the person killed consents to be killed.

(c) *Suicide* means the act or instance of taking one's own life voluntarily and intentionally.

§ 1643.3 Prohibition.

No recipient may use LSC funds to assist in, support, or fund any activity or service which has a purpose of assisting in, or to bring suit or provide any other form of legal assistance for the purpose of:

(a) Securing or funding any item, benefit, program, or service furnished for the purpose of causing, or the purpose of assisting in causing, the suicide, euthanasia, or mercy killing of any individual;

(b) Compelling any person, institution, or governmental entity to provide or fund any item, benefit, program, or service for such purpose; or

(c) Asserting or advocating a legal right to cause, or to assist in causing, the suicide, euthanasia, or mercy killing of any individual.

§ 1643.4 Applicability.

(a) Nothing in § 1643.3 shall be interpreted to apply to:

(1) The withholding or withdrawing of medical treatment or medical care;

(2) The withholding or withdrawing of nutrition or hydration;

(3) Abortion;

(4) The use of items, goods, benefits, or services furnished for purposes relating to the alleviation of pain or discomfort even if they may increase the risk of death, unless they are furnished for the purpose of causing or assisting in causing death; or

(5) The provision of factual information regarding applicable law on assisted suicide, euthanasia and mercy killing. Nor shall § 1643.3 be interpreted as limiting or interfering with the operation of any other statute or regulation governing the activities listed in this paragraph.

(b) This part does not apply to activities funded with a recipient's non-LSC funds.

§ 1643.5 Recipient policies and recordkeeping.

The recipient shall adopt written policies to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

Dated: December 23, 1997.

Victor M. Fortuno,

General Counsel.

[FR Doc. 97–33875 Filed 12–29–97; 8:45 am]

BILLING CODE 7050–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

48 CFR Parts 1201, 1202, 1203, 1205, 1206, 1209, 1214, 1216, 1217, 1222, 1224, 1225, 1236, 1237, 1246, and 1252

Amendment of Department of Transportation Acquisition Regulations

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Transportation Acquisition Regulation (TAR) to reflect the changes to the Federal Acquisition Regulation through the Federal Acquisition Circular 90–46 and to delete certification requirements.

DATES: This rule is effective January 29, 1998.

FOR FURTHER INFORMATION CONTACT: Charlotte Hackley, Office of Acquisition and Grant Management, M–60, 400 Seventh Street SW., Washington, DC 20590: (202) 366–4267.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Transportation has determined that changes to the

Transportation Acquisition Regulation (TAR) are necessary to implement and align it with 48 CFR Chapter Circulars 90–43 through 90–46, to delete certification requirements, amend part 1211 to insert language inadvertently omitted in 61 FR 50248, September 25, 1996, to implement statutory requirements, and to make minor editorial revisions and corrections.

B. Regulatory Analysis and Notices

The Department has determined that this action is not a significant regulatory action under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. The Department does not believe that there would be significant Federalism implications to warrant the preparation of a Federalism assessment.

C. Regulatory Flexibility Act

The Department certifies that this final rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely restates previous TAR coverage, deletes certification requirements which do not significantly alter the amount of information currently required, and makes minor editorial revisions.

D. Paperwork Reduction Act

There are no new information collection requirements that require clearance previously approved under OMB Control No. 2105–0517.

List of Subjects in 48 CFR Parts 1201, 1202, 1203, 1205, 1206, 1209, 1214, 1216, 1217, 1222, 1224, 1225, 1236, 1237, 1246, and 1252

Government procurement.

The Final rule is issued under the delegated authority of 49 CFR part 1.59(p). This authority is redelegated to the Senior Procurement Executive, issued this 18th day of December 1997, at Washington, DC.

David J. Litman,

Director of Acquisition and Grant Management.

Adoption of Amendments

For the reasons set out in the preamble, 48 CFR Chapter 12 is amended as follows:

1. The authority citation for 48 CFR chapter 12, parts 1201, 1202, 1203, 1205, 1206, 1209, 1214, 1216, 1217, 1222, 1224, 1225, 1236, 1237, 1246, and 1252 continues to read as follows:

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

PART 1201—FEDERAL ACQUISITION REGULATIONS SYSTEM [AMENDED]

2. Section 1201.105–2(b)(1)(i) is amended by revising ''(FAR) 48 CFR 1.104–2(b)'' to read ''(FAR) 48 CFR 1.105–2.''

2a. Section 1201.105–3 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 1201.105–3 Copies.

* * * * *

(b) The (TAR) 48 CFR chapter 12 and Transportation Acquisition Circulars (TACs) are available on the internet. See part 1202, appendix A, for the internet address.

2b. Section 1201.106(a) is amended by revising ''April 30, 1997'' to read ''May 31, 2000.''

PART 1202—DEFINITIONS OF WORDS AND TERMS

3. Section 1202.1 paragraphs (b) through (j) are redesignated as paragraphs (c) through (k); paragraph (b) is added and newly designated paragraphs (i), (j)(1) and (j)(7) are revised to read as follows:

§ 1202.1 Definitions.

* * * * *

(b) *Chief Information Officer (CIO)* means the Director of the Office of the CIO (S–80).

* * * * *

(i) *Head of the operating administration (HOA)* means the individual appointed by the President to manage the operating administration. (For acquisition related matters, the Director, Transportation Administrative Service Center (TASC) is the HOA for TASC.)

(j) * * *

(1) Federal Aviation Administration (FAA). (FAA is exempt from the TAR (48 CFR chapter 12) and TAM in accordance with the ''Department of Transportation and Related Appropriations Act for FY 1996'');

* * * * *

(7) Transportation Administrative Service Center (TASC);

* * * * *

3a. Subpart 1202.70 is added as follows:

Subpart 1202.70—Internet Links

§ 1202.7000 General.

Throughout the (TAR) 48 CFR chapter 12, referenced documents which can be found on the internet will cite the applicable internet address. These addresses are located in Appendix A of this part.

3b. Appendix A to part 1202 is added to read as follows:

APPENDIX A TO PART 1202.—LIST OF INTERNET ADDRESSES FOR TAR DOCUMENTS

TAR part	Document name	Internet address
1201	TAR	http://www.dot.gov/ost/m60/tamtar/part1201.htm
	TAC	http://www.dot.gov/ost/m60/tamtar/part1201.htm
1205	DOT Procurement Forecast	http://osdbuweb.dot.gov/consolic.htm
1234	Major Acquisition Policies and Procedures.	http://www.dot.gov/ost/m60/tamtar/chap1234.htm

PART 1203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1203.1—Safeguards

§ 1203.104–11 [Amended]

4. The heading of section 1203.104–11 is revised to read ''Criminal and civil penalties, and further administrative remedies.''

PART 1205—PUBLICIZING CONTRACT ACTIONS

5. In part 1205, subpart 1205.90 is added to read as follows:

Subpart 1205.90—Publicizing Contract Actions For Personal Services Contracting

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1205.90—Publicizing Contract Actions for Personal Services Contracting

§ 1205.9000 Applicability. (USCG)

Contracts awarded by the U.S. Coast Guard using the procedures in (TAR) 48 CFR 1237.104–91 are expressly authorized under Section 1091 of Title 10 U.S.C. as amended by Pub. L. 104–106, DOD Authorization Act, Section 733 for the Coast Guard and are exempt from the requirements of (FAR) 48 CFR part 5.

PART 1206—COMPETITION REQUIREMENTS

6. In part 1206, subpart 1206.90 is added to read as follows:

Subpart 1206.90—Competition Requirements for Personal Services Contracting

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1206.90—Competition Requirements for Personal Services Contracting

§ 1206.9000 Applicability. (USCG)

Contracts awarded by the U.S. Coast Guard using the procedures in (TAR) 48 CFR 1237.104–91 are expressly authorized under Section 1091 of Title 10 U.S.C. as amended by Pub. L. 104–106, DOD Authorization Act, Section 733 for the Coast Guard and are exempt from the competition requirements of (FAR) 48 CFR part 6.

PART 1209—CONTRACTOR QUALIFICATIONS

7. Subpart 1209.4 is added to read as follows:

Subpart 1209.4—Debarment, Suspension, and Ineligibility

§ 1209.408–70 Denial of funds.

(a) In accordance with Section 558 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103–337) and Section 206 of the Coast Guard Authorization Act of 1996 (Pub. L. 104–324), no funds available under appropriations acts for any fiscal year for DOT may (with respect to recruiting) be provided by contract to any institution of higher education that has a policy or practice, regardless of when implemented, that either prohibits or in effect prevents the Secretary of Defense from obtaining for military recruiting purposes:

(1) Entry to campuses or access to students on campuses; or

(2) Access to directory information on students.

(b) Directory information means the student's name, address, telephone listing, date and place of birth, level of education, academic major, degrees received, and the most recent educational institution in which the student was enrolled.

(c) Students referred to in paragraph (a)(1) of this section are individuals who are 17 years of age or older and are enrolled at a covered school.

(d) Covered school means an institution of higher education, or a subelement of an institution of higher education.

PART 1214—SEALED BIDDING

8. Section 1214.303 is removed.

PART 1216—TYPES OF CONTRACTS

9. Section 1216.405 is redesignated as section 1216.406 and paragraphs (a) through (c) are redesignated as (e)(1)(i) through (iii), respectively.

PART 1217—SPECIAL CONTRACTING METHODS

10. Subpart 1217.1 (1217.102 and 1217.102–1) is removed.

PART 1222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

11. Subpart 1222.6 (1222.608 and 1222.608–4) is removed.

PART 1224—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION:

12. Section 1224.202 is redesignated as section 1224.203.

PART 1225—FOREIGN ACQUISITION

13. Part 1225 (FAA Supplement) is removed and reserved.

PART 1236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

14. Section 1236.602–1 is amended by removing paragraphs (a), (a)(1) through (a)(5)(iii), and (c).

PART 1237—SERVICE CONTRACTING

15. Section 1237.104–90 is revised and 1237.104–91 is added to read as follows:

§ 1237.104–90 Delegation of authority. (USCG)

(a) Section 733(a) of Pub. L. 104–106, the DOD Authorization Act of 1996, amended Title 10 of the United States Code to include a new provision which authorizes the Secretary, with respect to the Coast Guard, to enter into personal services contracts at medical treatment facilities (10 U.S.C. 1091).

(b) The authority of the Secretary of Transportation under Pub. L. 104–106 to award personal services contracts for medical services at facilities for the Coast Guard is delegated to the HCA with the authority to redelegate to contracting officers under procedures established by the HCA, who will address applicable statutory limitations under Section 1091A of Title 10 U.S.C.

§ 1237.104–91 Personal services contracts with individuals under the authority of 10 U.S.C. 1091 (USCG).

(a) Personal services contracts for health care services are authorized by 10 U.S.C. 1091 for the Coast Guard. Sources for contracts for health care services under the authority of 10 U.S.C. 1091 shall be selected through procedures established in this section. These procedures do not apply to contracts awarded to business entities other than individuals. Selections made using the procedures in this section are exempt by statute from (TAR) 48 CFR part 1206 competition requirements (see (TAR) 48 CFR 1206.9000 (USCG)) and from (FAR) 48 CFR Part 6 competition requirements.

(b) The contracting officer must provide adequate advance notice of contracting opportunities to individuals residing in the area of the facility. The notice should include the qualification criteria against which individuals responding shall be evaluated. Contracting officers shall solicit offerors through the most effective means of seeking competition, such as a local publication which serves the area of the facility. Acquisitions for health care services using personal services contracts are exempt from posting and synopsis requirements of (FAR) 48 CFR part 5.

(c) The contracting officer shall provide the qualifications of individuals responding to the notice to the representative(s) responsible for evaluation and ranking in accordance with the evaluation procedures. Individuals must be considered solely on the professional qualifications established for the particular health care services being acquired and the Government's estimate of reasonable rates, fees, or costs. The representative(s) responsible for the evaluation and ranking shall provide the contracting officer with rationale for the ranking of the individuals consistent with the required qualifications.

(d) Upon receipt of the ranked listing of offerors, the contracting officer shall either:

(1) Enter into negotiations with the highest ranked offeror. If a mutually satisfactory contract cannot be negotiated, the contracting officer shall terminate negotiations with the highest ranked offeror and enter into negotiations with the next highest, or;

(2) Enter into negotiations with all qualified offerors and select on the basis of qualifications and rates, fees, or other costs.

(e) In the event only one individual responds to an advertised requirement, the contracting officer is authorized to negotiate the contract award. In this case, the individual must still meet the minimum qualifications of the requirement and the contracting officer must be able to make a determination that the price is fair and reasonable.

(f) If a fair and reasonable price cannot be obtained from a qualified individual, the requirement should be canceled and acquired using procedures other than those set forth in this section.

(g) The total amount paid to an individual in any year for health care services under a personal services contract shall not exceed the paycap in COMDTINST M4200.19 (series), Coast Guard Acquisition Procedures.

(h) The contract may provide for the same per diem and travel expenses authorized for a Government employee, including actual transportation and per diem in lieu of subsistence for travel between home or place of business and official duty station and only for travel outside the local area in support of the statement of work.

(i) Coordinate benefits, taxes and maintenance of records with the appropriate office(s).

(j) The contracting officer shall insure that contract funds are sufficient to cover all contingency items that may be cited in the statement of work for health care services.

PART 1246—QUALITY ASSURANCE

16. Section 1246.705 is amended by revising paragraph (a)(3) to read as follows:

§ 1246.705 Limitations.

(a) * * *

(3) Any warranty obtained shall specifically exclude coverage of damage in time of war or national emergency.

PART 1252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

17. Section 1252.223–70, 1252.228–70, 1252.228–72 are revised to read as follows and 1252.225–90 and 1252.225–91 are removed

§ 1252.223–70 Removal or disposal of hazardous substances—applicable licenses and permits.

As prescribed in (TAR) 48 CFR 1223.303, insert the following clause:

Removal or Disposal of Hazardous Substances—Applicable Licenses and Permits (Dec. 1997)

The Contractor must have all licenses and permits required by Federal, state, and local laws to perform hazardous substance(s) removal or disposal services. If the Contractor does not currently possess these documents, it must obtain all requisite licenses and permits within __ days after date of award. The Contractor shall provide evidence of said documents to the Contracting Officer or designated Government representative prior to commencement of work under the contract.

(End of clause)

§ 1252.228–70 Loss of or damage to leased aircraft.

As prescribed in (TAR) 48 CFR 1228.306–70 (a) and (b), insert the following clause:

Loss of or Damage to Leased Aircraft (Dec. 1997)

(a) The Government assumes all risk of loss of, or damage (except normal wear and tear) to, the leased aircraft during the term of this lease while the aircraft is in the possession of the Government.

(b) In the event of damage to the aircraft, the Government, at its option, shall make the necessary repairs with its own facilities or by contract, or pay the Contractor the reasonable cost of repair of the aircraft.

(c) In the event the aircraft is lost or damaged beyond repair, the Government shall pay the Contractor a sum equal to the fair market value of the aircraft at the time of such loss or damage, which value may be specifically agreed to in clause 1252.228–71, ''Fair Market Value of Aircraft,'' less the salvage value of the aircraft. However, the Government may retain the damaged aircraft or dispose of it as it wishes. In that event, the Contractor will be paid the fair market value of the aircraft as stated in the clause.

(d) The Contractor agrees that the contract price does not include any cost attributable to hull insurance or to any reserve fund it has established to protect its interest in the aircraft. If, in the event of loss or damage to the leased aircraft, the Contractor receives compensation for such loss or damage in any form from any source, the amount of such compensation shall be:

(1) Credited to the Government in determining the amount of the Government's liability; or

(2) For an increment of value of the aircraft beyond the value for which the Government is responsible.

(e) In the event of loss of or damage to the aircraft, the Government shall be subrogated to all rights of recovery by the Contractor against third parties for such loss or damage and the Contractor shall promptly assign such rights in writing to the Government.

(End of clause)

§ 1252.228–72 Risk and indemnities.

As prescribed in (TAR) 48 CFR 1228.306–70(a) and (d), insert the following clause:

Risk and Indemnities (Dec. 1997)

The Contractor hereby agrees to indemnify and hold harmless the Government, its officers and employees from and against all claims, demands, damages, liabilities, losses, suits and judgments (including all costs and expenses incident thereto) which may be suffered by, accrue against, be charged to or recoverable from the Government, its officers and employees by reason of injury to or death of any person other than officers, agents, or employees of the Government or by reason of damage to property of others of whatsoever kind (other than the property of the Government, its officers, agents or employees) arising out of the operation of the aircraft. In the event the Contractor holds or obtains insurance in support of this covenant, evidence of insurance shall be delivered to the Contracting Officer.

(End of clause)

TAR MATRIX

18. In Part 1253, subpart 1253.3, is amended by removing the entries for ''FAA 1252.225–90'' and ''FAA 1252.225–91'' from the TAR matrix.

[FR Doc. 97–33688 Filed 12–29–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 595

[Docket No. NHTSA–97–3111]

RIN 2127–AG61

Air Bag On-Off Switches

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule, correcting amendment.

SUMMARY: This document amends a final rule which allows motor vehicle dealers and repair businesses to install retrofit manual on-off switches for air bags in motor vehicles. The rule requires the on-off switch to be key operated and requires a telltale that indicates the operating status of the air bag. NHTSA has determined that the language of the regulatory text could be mistakenly interpreted to require a key specifically matched to the on-off switch and that the rule was ambiguous as to how the readiness indicator should function when one or both air bags have been deactivated by means of the on-off

switch. This rule revises the language of the regulatory text to clarify these issues. It also corrects a clerical error found in the original regulatory text.

DATES: *Effective Date:* The amendments made to this final rule are effective December 18, 1997. *Petitions:* Petitions for reconsideration must be received by February 13, 1998.

ADDRESSES: Petitions for reconsideration should refer to the docket number of this rule and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

For information about air bags and related rulemaking: Visit the NHTSA web site at http://www.nhtsa.dot.gov and click on the icon ''Air Bag Page''.

For legal issues: Ms. Rebecca MacPherson, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION: On November 21, 1997, NHTSA published in the **Federal Register** (62 FR 62406) a final rule which allows motor vehicle dealers and repair businesses to install retrofit manual on-off switches for air bags in vehicles owned by or used by persons whose requests for switches have been approved by the agency. Among the provisions of the final rule was a requirement that the on-off switch be operable solely by means of a key. Shortly after publication, the Ford Motor Company contacted NHTSA and stated that its existing on-off switch could be operated by means other than a key specifically designed for the switch. Ford requested clarification that its design would conform with the criteria set forth in the final rule.

NHTSA's purpose in requiring operation by a key was to ensure that the on-off switch could not be inadvertently triggered, thereby turning an air bag on or off without the conscious intent to do so. The concept of using of a key designed specifically to work with a particular on-off switch, was considered and rejected when the agency drafted the final rule. What the Agency intended was an instrument that must be inserted into the on-off switch mechanism and turned to change the status of an air bag, as opposed, for example, to a knob that could be turned by an occupant. Such an instrument need not be a ''key'' as that term is used in everyday speech, even though it falls within the dictionary definition (cf, Webster's Third New International Dictionary, etc.) Accordingly, the rule is being amended to require the use of a ''key or a key-like object'' to operate.

A sentence has been added to the end of section 595.5(b)(3)(i) to parallel the language concerning the air bag readiness indicator found in S4.5.2 of FMVSS 208. The addition of this sentence does not change the substantive requirements of the final rule.

This rule also corrects a clerical error found within section 595.5(b)(3) of the regulatory text. NHTSA notes that these changes to the final rule are minor changes which do not substantively impact the final rule as issued on November 18, 1997. Accordingly, NHTSA finds that the issuance of this rule does not require a prior period of notice and comment. NHTSA also finds for good cause that this final rule can be made effective in less than thirty days. An immediate effective date will allow switch manufacturers to design on-off switches in a manner which they find to be the most effective without fear of inconsistency with the regulatory requirements.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget (OMB) under E.O. 12866, ''Regulatory Planning and Review.'' This document amends an action that was determined to be ''significant'' under the Department of Transportation's regulatory policies and procedures because of the degree of public interest in this subject. However, this rule does not impose any new requirements on manufacturers. It simply clarifies the existing requirements.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action 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, this rule will not have an economic impact on any manufacturer or other entity.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. 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.

The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This rule does not meet the definition of a Federal mandate, because it adds no additional cost to the completely permissive final rule which it is clarifying.

Civil Justice Reform

This final rule has no 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 595

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA amends 49 CFR part 595, which becomes effective on December 18, 1997, as follows:

1. The authority citation for part 595 will continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30122 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 595.5 is amended by revising paragraph (b)(3) introductory

text and paragraph (b)(3)(i) to read as follows:

PART 595—RETROFIT ON-OFF SWITCHES FOR AIR BAGS

* * * * *

§ 595.5 Requirements.

* * * * *

(b) * * *

(3) The on-off switch meets all of the conditions specified in paragraphs (b)(3)(i) and (ii) of this section.

(i) The on-off switch is operable solely by a key or a key-like object. The on-off switch shall be separate from the ignition switch for the vehicle, so that the driver must take some action other than inserting the ignition key or turning the ignition key in the ignition switch to turn off the air bag. Once turned off, the air bag shall remain off until it is turned back on by means of the device. If a single on-off switch is installed for both air bags, the on-off switch shall allow each air bag to be turned off without turning off the other air bag. The readiness indicator required by S4.5.2 of § 571.208 of this chapter shall continue to monitor the readiness of the air bags even when one or both air bags has been turned off. The readiness indicator light shall not be illuminated solely because an air bag has been deactivated by means of an on-off switch.

* * * * *

Issued on: December 18, 1997.

Ricardo Martinez,

Administrator.

[FR Doc. 97–33956 Filed 12–29–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 961210346–7035–02; I.D. 122297F]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for Virginia

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

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the Commonwealth of Virginia has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Virginia for the remainder of calendar year 1997, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notice to advise the Commonwealth of Virginia that the quota has been harvested and to advise vessel and dealer permit holders that no commercial quota is available for landing summer flounder in Virginia.

DATES: Effective December 23, 1997, through December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Regina Spallone, Fishery Policy Analyst, 978–281–9221.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The initial total commercial quota for summer flounder for the 1997 calendar year was set equal to 11,111,298 lb (5,040,000 kg) (March 7, 1997, 62 FR 10473). The percent allocated to vessels landing summer flounder in Virginia is 21.31676 percent, or 2,368,569 lb (1,074,365 kg).

Section 648.100(d)(2) stipulates that any overages of commercial quota landed in any state be deducted from that state's annual quota for the following year. In the calendar year 1996, a total of 2,274,457 lb (1,031,676 kg) were landed in Virginia. The amount allocated for Virginia landings in 1996 was 2,200,681 lb (998,212 kg), creating a 73,776 lb (33,464 kg) overage that was deducted from the amount allocated for landings in the Commonwealth during 1997 (July 15, 1997, 62 FR 37742). The resulting quota for Virginia is 2,294,793 lb (1,040,901 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish a notice in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. Because the available information indicates that the Commonwealth of Virginia has attained its quota for 1997, the Regional Administrator has determined based on dealer reports and other available information, that the Commonwealth of Virginia's commercial quota has been harvested.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours December 23, 1997, further landings of summer flounder in Virginia by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 1997 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective the date above, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in Virginia for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12886.

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

Dated: December 22, 1997.

Gary C. Matlock,

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

[FR Doc. 97–33889 Filed 12–23–97; 3:51 pm]

BILLING CODE 3210–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208296–7296–01; I.D. 121997A]

Fisheries of the Exclusive Economic Zone Off Alaska; Closures of Specified Groundfish Fisheries in the Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is closing specified groundfish fisheries in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the prohibited species bycatch allowances and directed fishing allowances specified for the

1998 interim total allowable catch (TAC) amounts.

DATES: Effective 0001 hrs, Alaska local time (A.l.t.), January 1, 1998, until superseded by the Final 1998 Harvest Specification for Groundfish, which will be published in the **Federal Register**.

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

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

In accordance with § 679.20(d), if the Administrator, Alaska Region, NMFS (Regional Administrator) determines that the amount of a target species or ''other species'' category apportioned to a fishery or, with respect to pollock, to an inshore or offshore component allocation, will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group. If the Regional Administrator establishes a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified subarea or district (§ 697.20(d)(1)(iii)). Similarly, under § 679.21(e), if the Regional Administrator determines that a fishery category's bycatch allowance of halibut, red king crab, or *C. bairdi* Tanner crab for a specified area has been reached, the Regional Administrator will prohibit directed fishing for each species in that category in the specified area.

NMFS has published interim 1998 harvest specifications for these groundfish fisheries (62 FR 65626, December 15, 1997). The Regional Administrator has determined that the interim TAC amounts of pollock in the Bogoslof District; Pacific ocean perch, ''other rockfish'', and ''other red rockfish'' in the Bering Sea subarea; and sharpchin/northern rockfish, shortraker/rougheye rockfish, and ''other rockfish'' in the Aleutian Islands subarea, will be reached and will be necessary as incidental catch to support other anticipated groundfish fisheries prior to the time that final specifications for groundfish are likely to be in effect for the 1998 fishing year. Consequently, in accordance with § 679.20(d)(i), the Regional Administrator establishes these interim TAC amounts as directed fishing allowances.

Further, the Regional Administrator finds that these directed fishing allowances will be reached before the end of the year. Therefore, in accordance with § 679.20(d) NMFS is prohibiting directed fishing for these species in the specified areas. In addition, the interim BSAI halibut bycatch allowance specified for the trawl rockfish fishery and the trawl Greenland turbot/arrowtooth flounder/sablefish fishery categories, defined at § 679.21(e)(3)(iv)(C) and (D), is 0 mt. In accordance with § 679.21(e)(7)(iv), NMFS is prohibiting directed fishing for rockfish by vessels using trawl gear in the BSAI and for Greenland turbot/arrowtooth flounder/sablefish by vessels using trawl gear in the BSAI.

These closures will be in effect beginning at 0001 hours, A.l.t., January 1, 1998, until superseded by the Final 1998 Harvest Specifications for Groundfish.

While these closures are in effect, the maximum retainable bycatch amounts at § 679.20(e) and (f) apply at any time during a fishing trip. These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 679. Refer to § 679.2 for definitions of areas. In the BSAI, ''other rockfish'' includes Sebastes and Sebastolobus species except for Pacific ocean perch and the ''other red rockfish'' species. ''Other red rockfish'' includes shortraker, rougheye, sharpchin, and northern rockfish.

NMFS may implement other closures at the time the Final 1998 Harvest Specifications are implemented or during the 1998 fishing year, as necessary for effective conservation and management.

Classification

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

This action responds to the interim TAC limitations and other restrictions on the fisheries established in the Interim 1998 harvest specifications for groundfish for the BSAI. It must be implemented immediately to prevent overharvesting the 1998 interim TAC of several groundfish species in the BSAI. A delay in the effective date is impracticable and contrary to the public interest. The fleet will begin to harvest groundfish on January 1, 1998. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

Dated: December 22, 1997.

Gary C. Matlock,

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

[FR Doc. 97–33893 Filed 12–29–97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 970829216–7305–02; I.D. 073097B]

RIN 0648-AK15

Fisheries of the Exclusive Economic Zone Off Alaska; Extension of the Interim Groundfish Observer Program through 1998

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement a regulatory amendment to extend with some minor revisions the current groundfish observer coverage requirements and implementing regulations for the North Pacific Groundfish Observer Program (Observer Program) that are in effect through December 31, 1997. This action is necessary to assure uninterrupted observer coverage requirements through 1998. This action also provides notice of changes to observer qualifications and observer training/briefing requirements, which are non-codified elements of the Observer Program.

This action is intended to accomplish the objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs).

DATES: Effective January 1, 1998.

ADDRESSES: Copies of the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) prepared for this regulatory amendment and the Environmental Assessment (EA)/RIR/FRFA prepared for the 1997 Interim Groundfish Observer Program, dated August 27, 1996, may be obtained from the Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802; telephone: 907–586–7228. Copies of the non-codified

elements of the Observer Program may be obtained also from this address. Send comments regarding burden estimates or any other aspect of the data requirements, including suggestions for reducing the burdens, to NMFS and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, Attn: NOAA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Kim S. Rivera, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The U.S. groundfish fisheries of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands management area in the Exclusive Economic Zone are managed by NMFS under the FMPs. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and are implemented by regulations for the U.S. fisheries at 50 CFR part 679. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

In 1996, the Council adopted and NMFS implemented the Interim Groundfish Observer Program. The Interim Groundfish Observer Program superseded the North Pacific Fisheries Research Plan and extended the 1996 mandatory groundfish observer requirements through 1997, unless superseded by a long-term program that addresses concerns about observer data integrity, equitable distribution of observer coverage costs, and observer compensation and working conditions. NMFS continues to pursue a long-term solution to concerns about observer morale and the quality of observer data. NMFS is jointly developing with the Pacific States Marine Fisheries Commission (PSMFC) an alternative observer program joint project agreement (JPA) that would address concerns about observer data integrity and observer compensation and working conditions. At its June 1997 meeting, the Council supported the concept of developing such a program. The Council is scheduled to take final action on this JPA at its February 1998 meeting. Given that this alternative could not be in place by January 1, 1998, the current interim program must be extended to assure uninterrupted observer coverage requirements.

At its June 1997 meeting, the Council unanimously requested NMFS to extend through 1998 the current interim program, with minor revisions. A proposed rule to implement the interim program was published in the **Federal Register** on September 19, 1997 (62 FR 49198). Background information on the Interim Groundfish Observer Program may be found in the preamble to the proposed rule and in the RIR/FRFA prepared for this action. Comments on the proposed rule were invited through October 20, 1997. Three letters of comments were received. The comments are summarized and responded to in the Response to Comments section below.

Changes from the Proposed Rule

The following changes from the proposed rule are made in the final rule.

(1) Proposed regulations at § 679.50(i)(1)(i) exempt observer contractors certified prior to January 1, 1997, from the requirement to submit a certification application to NMFS. Comment received on the proposed rule questioned the situation whereby an observer contractor previously certified by NMFS but not actively providing observer services be allowed to perform the duties of an observer contractor without going through the NMFS certification process again. NMFS did not intend for this situation to be allowed and revises this final rule to specify that observer contractors certified prior to January 1, 1998, and providing observer services during 1997, are exempt from the requirement to submit an application.

(2) At its June 1997 meeting, the Council recommended an adjustment to the conflict-of-interest standard at § 679.50(h)(2)(i)(A)(*4*) that prohibits a person from serving as an observer if that person was employed in a North Pacific fishery during the previous 12-month period. The Council recommended a less restrictive standard that would prohibit an observer from working on any vessel or at any shoreside processor owned or operated by a person who previously employed the observer. The proposed regulation at § 679.50(h)(2)(i)(A)(*4*) is not necessary, because that the existing regulation at § 679.50(h)(2)(i)(A)(*3*) meets the criteria recommended by the Council. Through oversight, NMFS proposed to revise § 679.50(h)(2)(i)(A)(*4*) when actually, it should have proposed removing it. NMFS removes this regulation at § 679.50(h)(2)(i)(A)(*4*) and retains the conflict-of-interest standard at § 679.50(h)(2)(i)(A)(*3*) that states that observers may not serve as observers on any vessel or at any shoreside facility owned or operated by a person who previously employed the observers.

Regulatory Changes For The 1998 Interim Groundfish Observer Program

After considering the public comments received, NMFS is extending with some minor revisions the current groundfish observer coverage requirements and implementing regulations for the Observer Program. Except for the two changes from the proposed rule noted above, the other minor revisions were proposed in the proposed rule. The minor revisions are described below.

1. Extend the effective period of 50 CFR 679.50 through December 31, 1998.
2. Revise the 30–percent observer coverage requirement at § 679.50(c)(1)(vi) and (vii) to clarify that required coverage is specific to the gear type, meaning, for example, that observer coverage obtained for a vessel using hook-and-line gear cannot be used to comply with observer coverage requirements for the same vessel when it is used to fish with pot gear.
3. Expand the prohibition at § 679.7(g)(1) to include sexual harassment and bribery as unlawful interferences with an observer.
4. Remove the conflict-of-interest regulation at § 679.50(h)(2)(i)(A)(*4*). The existing conflict-of-interest regulation at § 679.50(h)(2)(i)(A)(*3*) that states that observers may not serve as an observer on any vessel or at any shoreside facility owned or operated by a person who previously employed the observers, fully implements the Council's recommendation at its June 1997 meeting to implement a less restrictive standard than the one at § 679.50(h)(2)(i)(A)(*4*).
5. Revise the regulation at § 679.50(i)(1)(i) to indicate that observer contractors certified prior to January 1, 1998, and that provided observer services during 1997, are exempt from the requirement to submit an application for certification.
6. Revise the regulation at § 679.50(i)(2)(xiv)(G) to alleviate confusion on what information observer contractors currently are required to submit to NMFS. The revision clarifies that an observer contractor must submit a completed and unaltered copy of each type of signed and valid contract an observer contractor has with those entities required to have observer services. Furthermore, upon NMFS's request, an observer contractor must submit completed and unaltered copies of signed and valid contracts that the contractor has with specific entities. Required copies of contracts must be submitted by mail or fax. Types of signed and valid contracts include the contracts an observer contractor has

with: (a) Vessels required to have 30–percent observer coverage, (b) vessels required to have 100–percent observer coverage, (c) shoreside processors required to have 30–percent observer coverage, (d) shoreside processors required to have 100–percent observer coverage, or (e) observers (to include contracts for the various compensation or salary levels of observers, the levels being based on observer experience).

7. Correct an erroneous cross-reference in the regulation at § 679.50(j)(7)(iv).

Changes to Non-codified Elements Of The Observer Program

Three elements of the 1997 Observer Program were not codified in regulation: (1) Observer qualifications, (2) observer training/briefing requirements, and (3) NMFS's selection criteria for observer contractors. NMFS's selection criteria for observer contractors remain unchanged. The observer contractor selection criteria were published in the **Federal Register** (61 FR 40380, August 2, 1996) and are available upon request (see **ADDRESSES**). Observer qualifications and observer training/briefing requirements are revised with the minor changes that were proposed in the preamble of the proposed rule. These non-codified elements will remain in effect until amended or rescinded. Although they will not be codified, they are viewed as a part of the rule and NMFS will publish a notification in the **Federal Register** and provide an opportunity for public comment prior to proposing future changes to these elements. The NMFS observer qualifications are as follows:

A. Prospective observers must have a bachelor's degree or higher from an accredited college or university with a major in one of the natural sciences.

B. Candidates must have a minimum of 30 semester hours or equivalent in applicable biological sciences with extensive use of dichotomous keys in at least one course. Candidates must also have successfully completed at least one undergraduate course in mathematics and one in statistics worth a combined total of at least 5 semester hours. In addition, all applicants are required to have computer skills that enable them to work competently with standard database software and computer hardware.

C. Prospective observers are also required to complete successfully any screening test(s) administered by NMFS. These tests would measure basic mathematics, algebra, and computer skills as well as other abilities necessary for successful job performance.

D. If a sufficient number of candidates meeting these educational prerequisites is not available, the observer contractor may seek approval from NMFS to substitute individuals with either a senior standing in an acceptable major, or with an Associate of Arts (A.A.) degree in fisheries, wildlife science, or an equivalent.

E. If a sufficient number of individuals meeting the above qualifications is not available, the observer contractor may seek approval from NMFS to hire individuals with other relevant experience or training.

F. To qualify for certification, all prospective observers must undergo safety and cold water survival training that requires the prospective observers to demonstrate their ability to properly put on an immersion suit in a specified time period, enter the water, travel approximately 50 m to a ladder, and climb out of the water.

The additional mathematics, statistics, and computer skills requirements reflect the increased responsibilities of observers and are similar to the observer qualifications that would have been required under the Research Plan, had it been fully implemented.

The NMFS observer training/briefing requirements are as follows:

A. Observers who have completed a deployment must be recertified prior to another deployment. All observers are required to complete a 4-day briefing prior to their first deployment in any calendar year. One-day briefings are required prior to subsequent deployments within a calendar year. Certification following 1– or 4-day briefings will expire after 1 month if deployment is delayed. Observers who have not been deployed for 18 months are required to complete a 3-week training course.

B. If an observer is not deployed within 1 month after completion of training, the individual must complete a 1-day briefing. If the observer is not deployed within 3 months after training, the individual must complete a 4-day briefing. If the observer is not deployed within 6 months after training, the individual must retake the full training course.

C. Observers may be required to attend an additional 4-day briefing based upon an evaluation of data collected during their most recent deployment.

Response to Comments

Comment 1. Previously certified observer contractors that have not been actively providing observer services should not be allowed to perform the duties of an observer contractor without going through the NMFS certification process again.

Response. NMFS agrees. When NMFS promulgated regulations applying to observer contractor certification (61 FR 56425; November 1, 1996), the intent was that observer contractors already certified and providing observer services need not submit certification applications for 1997. NMFS clarifies this intent in this final rule and revises the regulation at § 679.50(i)(1)(i) to indicate that observer contractors certified prior to January 1, 1998, and providing observer services during 1997, are exempt from submitting an observer contractor certification application. Observer contractors that were certified prior to January 1, 1998, but did not provide observer services during 1997 must be recertified.

Comment 2. NMFS should require observer contractors to be certified on an annual basis such that their performance in providing observer services can be reviewed periodically. NMFS should also consider limiting the number of certified observer contractors to the suite of contractors supplying observers in 1997.

Response. At this time, NMFS declines making major changes to the observer contractor certification process because they are outside the scope of this rule. NMFS and the Pacific States Marine Fisheries Commission (PSMFC) are jointly developing an alternative observer program JPA that would better ensure the collection of quality observer data by relying on a third party organization to provide procurement services for required observer coverage. The observer contractor certification process will be considered in this JPA between NMFS and PSMFC as well as contractual arrangements between PSFMC and observer companies. NMFS believes that an annual review of the performance of observer contractor companies could be accommodated under this new infrastructure. The JPA could also include a process to determine what the optimum number of observer contractor companies may be. At this time, action by NMFS to revise the certification process would be premature.

Comment 3. The Association for Professional Observers (APO) supports the proposed conflict-of-interest standard that states that observers may not serve as an observer onboard a vessel or plant where they were previously employed. The previous conflict-of-interest standard [§ 679.50(h)(2)(i)(A)(*4*)] was far stricter than any conflict-of-interest standard in

the United States government or for any Council member.

Response. NMFS concurs in the APO's comment. The conflict-of-interest standard at § 679.50(h)(2)(i)(A)(*4*) has been removed. The less strict standard at § 679.50(h)(2)(i)(A)(*3*) remains, providing that observers may not serve as observers on any vessel or at any shoreside facility owned or operated by a person who previously employed the observers.

Comment 4. The APO supports the inclusion of sexual harassment and bribery as unlawful interference with the observer.

Response. NMFS concurs and revises the regulation at § 679.7(g)(1) accordingly.

Comment 5. The observer coverage levels on vessels fishing with certain types of gear, such as pots, that experience low bycatch is unnecessary and costly. NMFS should not revise the 30 percent observer coverage requirement by quarter and by gear type unless pot gear is excluded.

Response. NMFS disagrees. The revisions to observer coverage regulations at § 679.50(c)(1)(vi) and (vii) serve only to clarify the original intent that the coverage is gear-specific. NMFS acknowledges that pot fisheries experience relatively low bycatch as evidenced by the gear-specific observer coverage requirements for catcher/processors and catcher vessels that are longer than 125 ft (38.1 m) length overall (LOA). Vessels fishing with pot gear are only required to have 30 percent observer coverage, while those using other gear types must have 100 percent coverage [§ 679.50(c)(1)(iv)].

Comment 6. The APO understands why NMFS requires observer contractors to submit specified information. APO does not understand why certified contractors are allowed to withhold this information from NMFS. If observers were to withhold required information, observers have, and would be, decertified. How is it possible that NMFS has never decertified or suspended an observer contractor in the past 7 years?

Response. NMFS does not allow observer contractors to withhold required information. Some observer contractors have interpreted the information submission regulations at § 679.50(i)(2)(xiv)(G) differently than NMFS intended. That was the impetus for NMFS to revise the regulations in this final rule, thereby clarifying NMFS's intent.

NMFS acknowledges that the current regulations governing observer contractor certification do not include a periodic review process to evaluate the ability of an observer contractor to satisfactorily perform their responsibilities and duties as required at § 679.50(i)(2). If NMFS became aware of evidence that an observer contractor failed to perform the necessary responsibilities and duties, NMFS would initiate an investigation under the suspension or decertification procedures.

Comment 7. The proposed requirement that observers have taken at least one course that used dichotomous keys extensively is ambiguous and subjective. The current observer requirements are too rigid and excessive given that observers are the most educated, yet lowest paid members of the fishing community.

Response. NMFS disagrees. When NMFS reviews observer candidates' transcripts, a course that used dichotomous keys extensively would be evidenced by a course in biological taxonomy or in a course description as provided with the transcript. NMFS observer training staff have noted that observer candidates with coursework in dichotomous keys are more successful in the portions of the observer training course where fish dichotomous keys are used.

Comment 8. The proposed changes that would increase the number of briefing days also increases the number of days that observers are not paid for their work. Until observers are paid a decent wage, the number of required briefing days should not be increased.

Response. NMFS disagrees. Although the proposed number of observer briefing days required in a 12-month period would increase from 2 to 4 under this rule, the number of observer briefing days required for subsequent deployments within a calendar year would decrease from 2 to 1. The total number of briefing days would be 4 for the first trip plus 1 for each subsequent deployment, compared to 2 briefing days for each trip as is currently required. The net change in annual number of observer briefing days is anticipated to be minimal. For instance, many observers are deployed twice per year. Under this final rule, they would be required to have 5 briefing days, as compared to 4 briefing days under the previous requirements. If an observer is deployed three times per year, the total number of briefing days would not change. NMFS believes any additional briefing days and the associated cost are warranted given the changes to observer sampling requirements and procedures that necessitate additional observer briefing time. NMFS does not anticipate that the training base for observers will change significantly in the near future such that the additional briefing days would not be necessary. The majority of the current observer contractor companies do compensate observers to some extent for briefing days.

Comment 9. Currently, if observers have not been deployed for a 2-year period, they must repeat the complete 3-week training course prior to being deployed. NMFS has proposed that this time period be reduced to 18 months. The APO opposes this revised requirement and believes that the 4-day briefing requirement for an observer who has not worked recently as an observer is sufficient. APO opposes any increased provisions affecting the observer until NMFS overhauls the structure of the observer program. If observers are required to go through training after 18 months of not observing, this amounts to more volunteer work on the part of the observer as most companies do not compensate the observer during training.

Response. NMFS disagrees. New and future programs (e.g., observer electronic reporting and multispecies CDQ, respectively) will continue to create additional training requirements for observers, therefore necessitating additional training time. Given these circumstances, NMFS can no longer assure the best quality observer data possible if some observers are not adequately trained in new sampling techniques and procedures. NMFS believes this change in requirements will affect only a relatively low number of observers. The best available information indicates that approximately 5 percent of observers trained and briefed in 1996 and 1997 had not been deployed during the prior 18-month period. The majority of the current observer contractor companies do compensate observers to some extent for training days. Nonetheless, NMFS believes modified training and briefing requirements are necessary to address data quality concerns.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

The changes occurring through this regulatory action are largely within the scope of issues thoroughly analyzed in the EA/RIR/FRFA for the 1997 Interim Groundfish Observer Program (61 FR 56425, November 1, 1996). A copy is available from NMFS (see **ADDRESSES**). That EA/RIR/FRFA supplements the EA/RIR/FRFA prepared for this action.

NMFS prepared an FRFA, which consists of the EA/RIR/FRFA and the preambles to the proposed and final rule

implementing this action. Based on the analysis, it was determined that this rule could have a significant economic impact on a substantial number of small entities. A copy of this analysis is available from NMFS (see **ADDRESSES**). Observer costs borne by vessels and processors are based on whether an observer is aboard a vessel and on overall coverage needs. Higher costs are borne by those vessels and shoreside processors that require higher levels of coverage. Most of the catcher vessels participating in the groundfish fisheries off Alaska and required to carry observers (i.e., vessels 60 ft (18.3 mt) LOA and longer) meet the definition of a small entity under the Regulatory Flexibilility Act. In 1995, about 270 catcher vessels carried observers. The FRFA prepared for the 1997 Interim Groundfish Observer Program describes the degree to which these catcher vessels would be economically impacted by observer coverage levels. Because this rule would not implement any changes in required observer coverage levels and the underlying socioeconomic status of the fishery has remained stable, the basic observer coverage requirements are not expected to result in any economic impacts beyond those already analyzed.

Several minor changes are implemented for 1998 under this rule. First, an observer conflict-of-interest regulation would be removed, thereby potentially creating increased employment opportunities for observers. Five observer contractors are likely to be affected by this rule. All are considered small entities, and none are likely to experience significant economic impacts. Given that observers are employees of observer contractors, this change could increase the economic benefits realized by observer contractors.

Second, although the number of observer briefing days required in a 12-month period would increase from 2 to 4, the number of observer briefing days required for subsequent deployments within a calendar year would decrease from 2 to 1. The net change in number of observer briefing days is anticipated to be minimal. The briefing day costs (lodging, per diem) are approximately $135–200 per day and are dependent on the briefing location (Alaska or Washington). The cost is borne by either the observer or the observer contractor and is dependent upon the specific employment arrangements between these entities. The briefing day costs are typically passed on from the observer or the observer contractor to the vessel or processor that is required to have the observer coverage. In 1996, 384 observers (employed by five observer contractors) were briefed for the North Pacific groundfish fisheries.

Third, additional training days will be required of observers that have not been deployed for 18 months. Previously, these observers were required to attend a 4-day briefing. This rule will require they attend a 3-week training course (15 working days). NMFS believes this change in requirements will affect only a relatively low number of observers. The best available information, through October 1997, indicates that approximately 5 percent of observers trained or briefed in 1996 and 1997 had not been deployed during the past 18-month period. From January 1996 through October 1997, 1,010 observers were trained or briefed. The majority of the current observer contractor companies do compensate observers to some extent for briefing/training days.

Alternatives that addressed modifying reporting requirements for small entities or the use of performance rather than design standards for small entities were not considered by the Council or in this analysis. Such alternatives are not relevant to this action and would not mitigate the impacts on small entities. Allowing exemptions for small entities from this proposed action would not be appropriate because the objective to assure uninterrupted and comprehensive observer coverage requirements through 1998 could not be achieved if small entities were exempted.

However, this action does include measures that will minimize the significant economic impacts of observer coverage requirements on at lease some small entities. Vessels less than 60 ft (18.3 m) LOA are not required to carry an observer while fishing for groundfish. Similarly, vessels between 60 ft (18.3 m) and 125 ft (38.1 m) LOA have lower levels of observer coverage than those for vessels over 125 ft (38.1 m) LOA. These measures, which have been incorporated into the requirements of the North Pacific Groundfish Observer Program since its inception in 1989, effectively mitigate the economic impacts on some small entities without adversely affecting implementation of the conservation and management responsibilities imposed by the FMPs and the Magnuson-Stevens Act.

The EA/RIR/FRFA prepared for the 1997 Interim Groundfish Observer Program (61 FR 56425, November 1, 1996) included the North Pacific Fisheries Research Plan (Research Plan) as an alternative. However, the Research Plan is no longer a viable alternative to the proposed interim observer program. The political and economic concerns that led the Council to repeal the Research Plan still exist. Furthermore, fees collected in 1995 were refunded in early 1996 and, if the Research Plan were pursued as the preferred alternative, start-up funding would have to be collected again. Regulations implementing the existing observer program will expire at the end of 1997. It is not feasible to implement a fee-based observer program by the end of this year, which would be necessary to provide observer coverage for the 1998 groundfish fisheries. The preferred alternative for an interim observer program is the only option that could be implemented by 1998 so that the groundfish fisheries could commence without interruption. Since the repeal of the Research Plan and at the direction of the Council, NMFS has been developing a long-term alternative program structure to address the problems identified with the current observer program structure. The Council is scheduled to take final action at its February 1998 meeting.

The proposed rule to implement regulatory changes to the Interim Groundfish Observer Program was published in the **Federal Register** on September 19, 1997 (62 FR 49198) and comments were invited on the IFRA. No comments were received on the IRFA.

This rule contains a revised collection-of-information requirement subject to the Paperwork Reduction Act (PRA). This collection-of-information requirement has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0648–0318. The estimated current burden for submission of observer contractor information is 15 minutes. The proposed rule requested public comment on this revised collection-of-information requirement. No comments were received from OMB or the public.

Public comment is sought regarding: Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. (See **ADDRESSES**.)

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.

Observer coverage provides quality data to monitor the fisheries, support resource management, and monitor compliance by vessels and shoreside processors with Federal fisheries regulations. Therefore, continuation of uninterrupted observer coverage requirements as intended by NMFS and the Council is essential to the conservation and management of the fisheries. In addition, insofar as the requirements of this observer program remain largely unchanged from those in effect during 1997, the affected public should be familiar with these requirements and should not need additional time to prepare for their renewed effectiveness at the beginning of the 1998 fisheries. Accordingly, for the reasons set forth above, the Assistant Administrator for Fisheries, NOAA finds for good cause namely, it is unnecessary and contrary to the public interest to delay the effectiveness of this rule for 30 days. In order to have no lapse in coverage, this rule is effective on January 1, 1998.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 22, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.7, paragraph (g)(1) is revised to read as follows:

§679.7 Prohibitions.

* * * * *

(g) * * *

(1) Forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with an observer.

* * * * *

3. In § 679.50, paragraph (h)(2)(i)(A)(*4*) is removed, paragraph (h)(2)(i)(A)(*5*) is redesignated as paragraph (h)(2)(i)(A)(*4*) and the section heading, paragraphs (c)(1)(vi) and (vii), (i)(1)(i) and (iii), introductory text of (i)(2)(xiv), (i)(2)(xiv)(G), and (j)(7)(iv) are revised to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 1998.

* * * * *

(c) * * *

(1) * * *

(vi) A catcher/processor or catcher vessel fishing with hook-and-line gear that is required to carry an observer under paragraph (c)(1)(v) of this section must carry an observer during at least one entire fishing trip using hook-and-line gear in the Eastern Regulatory Area of the GOA during each calendar quarter in which the vessel participates in a directed fishery for groundfish in the Eastern Regulatory Area using hook-and-line gear.

(vii) A catcher/processor or catcher vessel equal to or greater than 60 ft (18.3 m) LOA fishing with pot gear that participates for more than 3 fishing days in a directed fishery for groundfish in a calendar quarter must carry an observer during at least 30 percent of its fishing days while using pot gear in that calendar quarter and during at least one entire fishing trip using pot gear in a calendar quarter for each of the groundfish fishery categories defined under paragraph (c)(2) of this section in which the vessel participates.

* * * * *

(i) * * *

(1) * * *

(i) *Application*. An applicant seeking to become an observer contractor must submit an application to the Regional Administrator describing the applicant's ability to carry out the responsibilities and duties of an observer contractor as set out in paragraph (i)(2) of this section and the arrangements and methods to be used. Observer contractors certified prior to January 1, 1998, and that have provided observer services during 1997, are exempt from this requirement to submit an application and are certified for the term specified in paragraph (i)(1)(iii) of this section.

(ii) * * *

(iii) *Term*. Observer contractors will be certified through December 31, 1998. Observer contractors can be decertified or suspended by NMFS under paragraph (j) of this section.

(2) * * *

(xiv) Providing the following information to the Observer Program Office by electronic transmission (e-mail), fax, or other method specified by NMFS.

* * * * *

(G) A completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) an observer contractor has with those entities requiring observer services under paragraphs (c) and (d) of this section and with observers. Completed and unaltered copies of signed and valid contracts with specific entities requiring observer services or with specific observers must be submitted to the Observer Program Office upon request. Types of signed and valid contracts include the contracts an observer contractor has with:

(*1*) Vessels required to have observer coverage as specified at paragraphs (c)(1)(i) and (iv) of this section,

(*2*) Vessels required to have observer coverage as specified at paragraphs (c)(1)(ii), (v), and (vii) of this section,

(*3*) Shoreside processors required to have observer coverage as specified at paragraph (d)(1)(i) of this section,

(*4*) Shoreside processors required to have observer coverage as specified at paragraph (d)(1)(ii) of this section,

(*5*) Observers (to include contracts for the various compensation or salary levels of observers, the levels being based on observer experience).

(*6*) Required copies of contracts must be submitted by mail or faxed to: NMFS Observer Program Office, 7600 Sandpoint Way Northeast, Seattle, WA 98115–0070; fax number 206–526–4066.

* * * * *

(j) * * *

(7) * * *

(iv) If the appeals officer grants review based on the written petition, he or she may request further written explanation from observers, observer contractors, or the decertifying officer or suspending officer. The appeals officer will then render a written decision to affirm, modify, or terminate the suspension or decertification or return the matter to the suspending or decertifying official for further findings. The appeals officer must base the decision on the administrative records compiled under paragraphs (j)(5) or (j)(6) of this section, as appropriate. The appeals officer will serve the decision on observers or observer contractors and any affiliates involved, personally or by certified mail, return receipt requested, at the last known residence or place of business.

* * * * *

[FR Doc. 97-33892 Filed 12–29–97; 8:45 AM]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 249
Tuesday, December 30, 1997

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

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 301

[Docket No. 96–069–1]

High-Temperature Forced-Air Treatments for Citrus

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow the use of a process involving high-temperature forced air for treating tangerines, oranges (except navel oranges), and grapefruit from Mexico and areas of the United States that are infested with plant pests in the genus *Anastrepha,* which includes *A. ludens,* the Mexican fruit fly. This action would provide an additional option for treating these fruits. The treatments would be included in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference into the Code of Federal Regulations.

DATES: Consideration will be given only to comments received on or before March 2, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–069–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–069–1. 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 tocall ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Campbell, Operations Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 136, Riverdale, MD 20737–1236; (301) 734–6799; or e-mail rcampbell@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

To prevent the spread of plant pests into or within the United States, the U.S. Department of Agriculture (USDA) restricts the importation and interstate movement of many articles, including fruits. As a condition of movement, some fruits are required to be treated for plant pests in accordance with the Code of Federal Regulations (CFR). The Plant Protection and Quarantine Treatment Manual (PPQ Treatment Manual) of the USDA's Animal and Plant Health Inspection Service (APHIS) contains approved treatment schedules and is incorporated by reference into the CFR at 7 CFR 300.1.

Pursuant to 7 CFR 319.56–2x, USDA allows tangerines, oranges, and grapefruit from Mexico to be imported into the United States if treated in accordance with the PPQ Treatment Manual. We are proposing to amend this manual to include the high-temperature forced-air treatments described below under ''Treatments'' for tangerines, oranges (except navel oranges), and grapefruit from Mexico as additional effective treatments for pests in the genus *Anastrepha,* which includes *A. ludens,* the Mexican fruit fly. We would amend 7 CFR 300.1 to show that the PPQ Treatment Manual has been so changed.

In addition, because the Mexican fruit fly infests parts of the United States (currently, parts of Texas and California), USDA regulates the interstate movement of certain articles from those areas under the Mexican Fruit Fly Quarantine and Regulations, found at 7 CFR 301.64 through 301.64–10. Acceptable treatments for the regulated articles are listed in § 301.64–10. Treatments for the regulated articles themselves include a cold treatment, fumigation with methyl bromide, and a high-temperature forced-air treatment for grapefruit of a certain size; treatments for the fields or groves in which the regulated articles are grown include a soil drench with diazinon and a malathion bait spray.

The high-temperature forced-air treatment for grapefruit listed in § 301.64–10(e) specifies that the grapefruit must be at least 3.5 in (9 cm) in diameter and 9.25 oz (262 g) in weight. This treatment is based on a target temperature, which means that any *Anastrepha* larvae present in the grapefruit are killed through a process of incrementally increasing the air temperature in the hot-air chamber until the temperature at the grapefruit center reaches 118 °F (48 °C). The treatment specifies a minimum size for the grapefruit because grapefruit less than the specified size were found during research to reach the target temperature too quickly to ensure larvae mortality. This treatment, which is still a viable option, is also included in the PPQ Treatment Manual.

We are proposing to amend § 301.64–10 to allow for the use of the high-temperature forced-air treatments described below for tangerines, oranges (except navel oranges), and grapefruit. Unlike the treatment described above, which is based on a target temperature, the proposed treatments are based on time: They involve maintaining at least a specified temperature in the hot-air chamber for a specified period of time. These treatments specify a maximum size for the fruit because research revealed that, when used on fruit larger than the stated size, the treatment did not raise the internal temperature of the fruit sufficiently within the allotted time to ensure mortality of *Anastrepha* larvae. We would indicate in § 301.64–10(e) that these three new treatments are included in the PPQ Treatment Manual.

For consistency, we are also proposing to remove from § 301.64–10 the specific requirements for the cold treatment, the methyl bromide treatment, and the high-temperature forced-air treatment, which are described, respectively, in paragraphs (a), (d), and (e). Because all of these treatments are spelled out in the PPQ Treatment Manual, there is no reason for them also to be listed in the CFR. Removing the specific instructions for these treatments from § 301.64–10 and indicating that the treatments should be conducted in accordance with the PPQ Treatment Manual is in keeping with regulatory reform efforts to remove unnecessary or redundant Federal regulations.

The soil drench and malathion bait spray treatments are not listed in the PPQ Treatment Manual and will remain in § 301.64–10 (b) and (c). These treatments are cultural practices to be performed by producers in the groves

and fields, not quarantine treatments to be performed on the regulated articles as are the cold, methyl bromide, and high-temperature forced-air treatments. However, we are proposing some minor grammatical and punctuation changes to § 301.64–10(b).

Treatments

The following high-temperature forced-air treatments were developed by the USDA's Agricultural Research Service. The treatments must be administered in sealed, insulated chambers. The air may be heated in the chambers, or hot air may be introduced into the chambers.

Tangerines

The proposed treatment is for tangerines that are commercial size 125 or smaller. (Commercial size is an index based on the approximate number of fruit that fit into a commercial shipping box [40 lb or 18.14 kg].) Each tangerine must weigh no more than 8.6 oz (245 g).

Place the tangerines in the chamber and seal it. Raise the air temperature in the chamber to 113 °F (45 °C) or higher for 210 minutes. (Treatment time begins when the coldest air temperature sensor reaches 113 °F.) Record the temperature of each sensor at least once every 2 minutes throughout the treatment. Any temperature reading below 113 °F will invalidate the entire treatment. If any low temperature readings occur, repeat (do not simply extend) the treatment.

Oranges

The proposed treatment is for oranges (except navel oranges) that are commercial size 100 or smaller. Each orange must weigh no more than 16.5 oz (468 g).

Place the oranges in the chamber and seal it. Raise the air temperature in the chamber to 114.8 °F (46 °C) or higher for 250 minutes. (Treatment time begins when the coldest air temperature sensor reaches 114.8 °F.) Record the temperature of each sensor at least once every 2 minutes throughout the treatment. Any temperature reading below 114.8 °F will invalidate the entire treatment. If any low temperature readings occur, repeat (do not simply extend) the treatment.

Grapefruit

The proposed treatment is for grapefruit that are commercial size 70 or smaller. Each grapefruit must weigh no more than 18.8 oz (532 g).

Place the grapefruit in the chamber and seal it. Raise the air temperature in the chamber to 114.8 °F (46 °C) or higher for 300 minutes. (Treatment time begins when the coldest air temperature sensor reaches 114.8 °F.) Record the temperature of each sensor at least once every 2 minutes throughout the treatment. Any temperature reading below 114.8 °F will invalidate the entire treatment. If any low temperature readings occur, repeat (do not simply extend) the treatment.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This proposed rule would allow use of a process involving high-temperature forced air for treating tangerines, oranges (except navel oranges), and grapefruit from Mexico and areas of the United States infested with plant pests in the genus *Anastrepha,* including *A. ludens,* the Mexican fruit fly. High-temperature forced-air treatments developed by the Agricultural Research Service would serve as additional treatment alternatives against the Mexican fruit fly and other species of *Anastrepha* that may attack tangerines, oranges, and grapefruit grown in Mexico and the United States. Development of these proposed treatments was triggered, in part, by the expected loss of methyl bromide as a treatment and phytotoxicity of oranges to methyl bromide. (The U.S. Clean Air Act requires that any substance identified as ozone depleting, including methyl bromide, be withdrawn from production, importation, and use in the United States by the year 2000.)

At present, tangerines, oranges, and grapefruit imported from Mexico can be treated for the Mexican fruit fly and other species of *Anastrepha* using several different methods. Cold treatment is acceptable for tangerines, oranges, and grapefruit. Vapor heat and methyl bromide treatments are acceptable for clementines (a variety of tangerine), oranges, and grapefruit. Grapefruit of a certain size may also be treated with a high-temperature forced-air treatment that is a different temperature and time combination than the procedure described in this proposed rule.

Acceptable treatments for tangerines, oranges, and grapefruit produced in the regulated areas of the United States include cold treatment of the fruit, treatment of the soil in the groves, and bait-spray treatment of the groves. Additionally, oranges and grapefruit may be treated with methyl bromide, and grapefruit may be treated with a different high-temperature forced-air treatment than the procedure described in this proposed rule.

The provision of high-temperature forced-air treatments as described in this proposed rule as an alternative treatment for tangerines and oranges, and as an additional high-temperature forced-air treatment alternative for grapefruit, would provide one more treatment method from which to choose.

Mexico is the largest source of citrus imported into the United States. In 1996, the value of citrus imported from Mexico totaled about $38 million, representing approximately 40 percent of U.S. citrus imports. We do not anticipate any increase in the amount of tangerines, oranges, or grapefruit imported into the United States as a result of this proposed action.

More than half of the citrus imported from Mexico is not treated at all because it is imported from Mexican municipalities free of fruit flies. Such was the case for about 52 percent of the citrus imported from Mexico in fiscal year (FY) 1995 and about 57 percent in FY 1996. Citrus may be exported to the United States from these fruit-fly-free municipalities with certification only. Shipments of tangerines, oranges, and grapefruit from other areas of Mexico are treated before they arrive at the U.S. border. In FY 1996, approximately 3,427 metric tons of tangerines and 88 metric tons of oranges from Mexico were fumigated with methyl bromide before being precleared for entry into the United States.

The only areas of the United States currently infested with Mexican fruit fly are in Texas and California. The infested area in California is primarily urban and includes no commercial production. The regulated areas in Texas are found in a major citrus-growing region. In FY 1996, four of the five regulated production areas in Texas were found to be infested with the Mexican fruit fly, and 5,426,900 pounds of citrus (mostly grapefruit) were fumigated for shipment internationally or to citrus-growing areas of the United States. Most of the citrus was shipped to California. Again, in FY 1997, four of the five production areas were found infested, and the exported fruit was fumigated.

There are eight fumigation companies treating citrus shipped from the regulated areas of Texas, and all are considered small businesses by U.S. Small Business Administration standards (annual revenue less than $5 million, averaged over 3 years). The approval of high-temperature forced air as an alternative treatment could lead to a reduction in the income of these fumigation companies if the citrus growers were to find that using high-

temperature forced air is financially preferable to using fumigation. No facilities currently exist in Texas that are capable of performing high-temperature forced-air treatments. However, in recent meetings of growers in the regulated areas, the possibility of building and operating one or two high-temperature forced-air treatment facilities as cooperative ventures (in view of the sizable cost of such facilities) was discussed. The time required for realization of such a cooperative effort would provide the fumigation companies a period to adjust to any anticipated reduction in business. Moreover, unless special-use exemptions are attached to the Clean Air Act or another fumigation compound is approved to replace methyl bromide, the fumigating companies will soon no longer be able to fumigate regulated citrus anyway. When methyl bromide use is banned, any possible impacts on the incomes of these companies from the addition of high-temperature forced-air treatments as alternative treatment methods would become inconsequential.

No significant economic impacts on any small entities, including citrus importers or producers or providers of alternative pest treatments for citrus, are expected due to the proposed addition of the high-temperature forced-air treatment methods described in this proposed rule. The number of importers of tangerines, oranges, and grapefruit from Mexico and the percentage that are small entities are not known, but most are probably not small (defined for fruit and vegetable wholesalers as having fewer than 100 employees). As described above, the eight potentially affected U.S. fumigation firms are small entities, but these firms would likely be affected by the proposed rule only if one or more high-temperature forced-air treatment facilities were to be constructed and become operational prior to the time the ban on methyl bromide becomes effective—at which time the economic effect of the proposed rule on the fumigation firms becomes irrelevant. Both large and small citrus producers in the regulated areas of the United States could benefit from the proposed rule if the proposed treatment were to prove less expensive than fumigation. Moreover, the proposed rule could be beneficial to these producers when methyl bromide use is banned because it provides another acceptable method for treating their citrus for export or shipment to restricted areas of the United States.

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR parts 300 and 301 would be amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 would continue to read as follows:

Authority: 7 U.S.C. 150ee, 154, 161, 162, and 167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 300.1, paragraph (a), the introductory text would be revised to read as follows:

§ 300.1 Materials incorporated by reference; availability.

(a) *Plant Protection and Quarantine Treatment Manual.* The Plant Protection and Quarantine Treatment Manual, which was reprinted November 30, 1992, and includes all revisions through _____ has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 301—DOMESTIC QUARANTINE NOTICES

3. The authority citation for part 301 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

4. In § 301.64–1, a new definition would be added in alphabetical order to read as follows:

§ 301.64–1 Definitions.

* * * * *

PPQ Treatment Manual. The Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter.

* * * * *

5. Section 301.64–10 would be revised to read as follows:

§ 301.64–10 Treatments.

* * * * *

(a) *Apple, grapefruit, orange, pear, plum, pomegranate, quince, and tangerine.* Cold treatment in accordance with the PPQ Treatment Manual.

(b) *Soil within the dripline of plants that are producing or have produced fruits listed in § 301.64–2(a).*

Host fruits must be removed from host plants prior to treatment.

Material: diazinon

Dosage: Apply 5 lb a.i. per acre (0.12 lb or 2 oz avdp. per 1,000 ft^2).

Method: Soil drench using ground equipment. Apply with 130 gal of water per acre (3 gal per 1,000 ft^2) under hosts.

Frequency/timing: Three applications at 14- to 16-day intervals as needed. Applications may be repeated if infestations become established.

In addition to the above, diazinon must be applied in accordance with all label directions.

(c) * * *

(d) *Grapefruit and oranges.* Methyl bromide in accordance with the PPQ Treatment Manual.

(e) *Grapefruit, oranges (except navel oranges), and tangerines.* High-temperature forced air in accordance with the PPQ Treatment Manual.

Done in Washington, DC, this 18th day of December.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–33718 Filed 12–29–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS 1805–96]

RIN 1115–AC72

Tracking Usage of the H–1B and H–2B Nonimmigrant Classifications

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Immigration and Naturalization Service's (Service) regulations by explaining in detail the new method by which the Service tracks the number of H–1B and H–2B petitions approved in a fiscal year and by removing incorrect references in the regulation regarding the tracking mechanism. This rule was written in response to a number of queries from the public asking how the Service determines which H–1B and H–2B petitions are included in the count. This rule will alleviate much of the confusion regarding the Service's method of counting H–1B and H–2B petitions.

DATES: Written comments must be submitted on or before March 2, 1998.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference the INS number 1805–96 in your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–3240.

SUPPLEMENTARY INFORMATION: The Immigration Act of 1990 (IMMACT), among other things, imposed a 65,000 annual numerical limitation on the number of aliens who may be granted H–1B visas or accorded such status in a fiscal year and a 66,000 annual numerical limitation on the number of aliens who may be accorded H–2B status. The Service agreed to track the number of aliens accorded H–1B and H–2B status since the Department of State, the agency which issues nonimmigrant visa's to aliens, has no centralized database to track visa issuance. Further, an H–1B or H–2B visa may not be issued to an alien without the Service first approving Form I–129, Petition for Nonimmigrant Worker, in the alien's behalf and, in addition, some H–1B and H–2B nonimmigrant aliens are not required to obtain a nonimmigrant visa.

The Service published a final rule in the **Federal Register** on December 2, 1991, at 56 FR 61111, in which the present tracking system was implemented. In the preamble to the rule, the Service advised that the numerical limitations would apply to new H–1B and H–2B petitions only and that petitions filed for extensions of stay would not be counted, since the alien beneficiary of the extended petition had previously been accorded H status. It was also stated in the preamble to the final rule that the Service would count petitions for concurrent employment, *i.e.,* where a beneficiary holds two H–1B or H–2B positions at the same time, and petitions for sequential employment, *i.e.,* where the beneficiary assumes one H–1B or H–2B position after another in the same fiscal year, in the cap. As stated in the preamble to the final rule published in December 1991, the reason for adopting this procedure was efficiency.

The Service has recently had reason to revisit its procedures for tracing the usage of H petitions in general, and the H–1B category in particular. On August 21, 1996, a preliminary report indicated that, under the tracking system then in place, the Service had approved in excess of 65,000 H–1B petitions for fiscal year 1996. While attempting to verify the validity of the preliminary count, the Service made a number of observations which culminated in the publication of this proposed rule.

The most significant observation that the Service made with respect to its current tracking system was that, by counting concurrent employment and sequential employment, it was actually counting positions, and not aliens. The Service has reconsidered its prior procedure and no longer counts either sequential or concurrent employment in the same fiscal year towards the numerical limitations. The numerical limitations would now relate solely to individuals regardless of the number of H–1B or H–2B positions such persons hold. This proposed rule would amend the regulation at 8 CFR 214.2(h)(8)(ii)(A) to reflect this change. The Service has made available on a quarterly basis the usage of H–1B/H–2B numbers. The Service intends to continue this practice.

Approved H–1B and H–2B petitions which are subsequently revoked by the Service will not be counted in the numerical limitation. The Service will run a periodic report containing the number of revoked petitions and adjust the numerical count accordingly. In view of this, petitioners are encouraged to notify the Service as soon as they learn that the beneficiary of an H–1B or H–2B petition does not intend to accept the petitioner's offer of employment.

This rule also proposes to amend the regulation at 8 CFR 214.2(h)(8)(ii)(B) and (D) which makes reference to the ''system which maintains and assigns numbers,'' since the regulatory language is not accurate. When this regulation was initially drafted, the Service had envisioned developing and designing a system which would count each petition which it approved and assign each petition a number. This system was never developed. Instead, the Service tracks the number of H–1B and H–2B petitions which it approves through its Computer-Linked Application Information Management System (CLAIMS) database. The terminology contained in the current rule implies that a petition is assigned a number upon approval. This is inaccurate. Instead, the Service runs periodic reports which count the number of petitions approved for the fiscal year without assigning a petition an actual number. There is no system which keeps a running count of approved H–1B and H–2B petitions.

This rule also proposes to remove the paragraph at 8 CFR 214.2(h)(8)(ii)(C) which makes reference to assigning numbers to petitions filed in Guam and the United States Virgin Islands. Since these petitions are counted in the same fashion as H petitions filed in the continental United States, the paragraph serves no purpose.

Finally, this rule proposes to amend the regulation at 8 CFR 214.2(h)(8)(ii)(E) and to redesignate it as 8 CFR 214.2(h)(8)(ii)(D). The regulation currently provides that, in the event that the numerical limitation is reached in a fiscal year, the Service shall reject any new petitions which are filed with a notice that numbers are not available until the next fiscal year. This proposed rule modifies the regulatory language by enabling the Service to adopt a different procedure in the event that rejecting petitions is determined not to be the most appropriate action for the Service to undertake. For example, in the situation where the numerical limitation is reached near the end of the fiscal year, it would not seem prudent to reject an H–1B petition or H–2B petition filed for that fiscal year since this procedure could create unnecessary work for the Service and an unnecessary hardship on petitioners in certain situations. The Service will notify the public through

the publication of a notice in the **Federal Register** of any such procedure should such a situation arise.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. This regulation merely explains the system which the Service currently uses to track the number of H–1B petition approved in a given fiscal year.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule in not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 12612

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

Executive Order 12988—Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Reporting and recordkeeping requirements.

Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulation is proposed to be amended as follows:

PART 214—NONIMMIGRANT GLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2.

2. Section 214.2 is amended by revising paragraph (h)(8)(ii) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(8) * * *

(ii) *Procedures.* (A) Each alien issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) or (ii)(b) of the Act shall be counted for purposes of the numerical limit prescribed in section 214(g)(1) of the Act. Requests for petition extension or an extension of the alien's stay, concurrent employment, or sequential employment within the same fiscal year shall not be counted against the numerical limit. The spouse and children of principal aliens classified as H–4 nonimmigrant aliens shall not be counted against the numerical limit.

(B) An alien will be counted against the annual H–1B or H–2B numerical limit only after an H–1B or H–2B petition has been approved on his or her behalf. An alien will be counted in the order by which the H–1B or H–2B petition has been approved on his or her behalf. An alien on whose behalf an H–1B or H–2B petition has been denied will not be counted against the annual numerical limit.

(C) When an approved petition is not used because the beneficiary(ies) does not obtain H–1B or H–2B classification, the petitioner shall notify the Service Center Director who approved the petition that the petition was not used as soon as the petitioner becomes aware of the circumstance. The petition shall be revoked pursuant to paragraph (h)(11)(ii) of this section.

(D) If the total numbers available in a fiscal year are used, the Service may reject and return the petition and the accompanying fee with a notice that numbers are not available for the nonimmigrant classification until the next fiscal year. The Service, may, in its discretion, adopt other mechanisms for processing petitions filed after the numerical limit has been reached in order to prevent unnecessary hardship to the public. The Service shall provide notice of such new mechanisms through publication in the **Federal Register.**

* * * * *

Dated: October 21, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 97–33827 Filed 12–29–97; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 123 and 142

RIN 1515–AC16

Land Border Carrier Initiative Program

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to provide for the Land Border Carrier Initiative Program (LBCIP), a program designed to prevent smugglers of illicit drugs from utilizing commercial land conveyances for their contraband. The program provides for agreements between carriers and Customs in which the carrier agrees to increase its security measures and cooperate more closely with Customs and Customs agrees to apply special administrative provisions pertaining to penalty amounts and expedited processing of penalty actions if illegal drugs are found on a conveyance belonging to the participating carrier. Further, at certain high-risk locations along the land border, it is proposed to condition an importer's continued use of the Line Release method of processing entries of merchandise on the use of carriers/drivers that participate in the LBCIP. These proposed regulatory changes are designed to improve Customs enforcement of Federal drug laws along the land border by enhancing its ability to interdict illicit drug shipments through additional trade movement information provided by common

carriers that voluntarily choose to participate in the LBCIP.

DATES: Comments must be received on or before March 2, 1998.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Suite 3000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Jim Kelly, Office of Field Operations, Anti-Smuggling Division, (202) 927–0458.

SUPPLEMENTARY INFORMATION:

Background

I. Carrier Initiative Programs in General

In 1984, Customs began an air and sea Carrier Initiative Program (CIP), generally in response to Customs awareness of a substantial increase in the smuggling of marijuana and cocaine in the South-Florida area, and specifically as a result of a Customs seizure of an aircraft operated by an American-flag carrier. The carrier, whose aircraft had been involved in repeated drug violations, agreed to a multi-point agreement implementing stringent security measures as a condition to release of the conveyance. Developed under Customs remission and mitigation of penalties authority pursuant to section 618 of the Tariff Act of 1930 (19 U.S.C. 1618), the CIP is grounded in the execution of written Carrier Initiative Agreements between Customs and the common carrier, whereby the carrier agrees to improve cargo and conveyance security, and Customs provides security and drug awareness training.

Over the past ten years, the air and sea CIP has proved to be a marked success. Since that time, Customs has come to view carriers as allies in the war against drug smugglers, and expanded the CIP to include Super Carriers (see, 54 FR 14310, April 10, 1989). To date, over 2,300 air and sea carriers have voluntarily signed such Carrier Initiative Agreements with Customs.

Because of the proven success of the air and sea CIP, in 1995 Customs decided to expand the CIP to land border carriers to address the increased drug smuggling threat. This new Land Border Carrier Initiative Program (LBCIP) is designed to deter smugglers of illegal drugs from utilizing commercial land conveyances for their contraband. The exact locations along the Southwest border where the LBCIP will be implemented will be published in the **Federal Register**.

In signing Carrier Initiative Agreements with Customs, land and rail carriers agree to increase the security measures at their places of business and on the conveyances used to transport cargo. Further, carriers agree to cooperate closely with Customs in identifying and reporting suspected smuggling conduct. In return for this cooperation, Customs agrees to provide training to carrier employees and drivers in the areas of cargo and personnel security, document review techniques, drug awareness, and conveyance search. Further, should illegal drugs be found aboard a conveyance belonging to a carrier that has executed an agreement with Customs, Customs agrees to apply special administrative provisions pertaining to penalty amounts and expedited processing of penalties. Of course, the degree of compliance with the terms of the Agreement by the carrier will be considered by Customs in any seizure or penalty decision or recommendation.

II. The Drug Interdiction Mandates of the Anti-Drug Abuse Acts

In 1986, Congress enacted the Anti-Drug Abuse Act of 1986 (Pub. L. 99–570, 100 Stat. 3207; 21 U.S.C. 801 note) (the 1986 Act) to, among other things, strengthen Federal efforts to improve the enforcement of Federal drug laws and enhance the interdiction of illicit drug shipments.

The 1986 Act amended Customs laws relating to the assessment of monetary penalties against persons in charge of conveyances used as common carriers and the seizure and forfeiture of conveyances for the illegal importation or transportation of drugs. Congress subjected common carriers to increased penalties and sanctions for at least two reasons: (1) To encourage greater vigilance on the part of those in charge of conveyances used as common carriers; and (2) to increase the accountability and legal responsibility of carriers to insure that drugs were not carried on board their conveyances.

In particular, the 1986 Act amended sections 584 and 594 of the Tariff Act of 1930 (19 U.S.C. 1584 and 1594). Section 584 was amended to increase the penalty provisions which could be assessed against owners, masters, or persons in charge of conveyances engaged as common carriers when unmanifested drugs were discovered on board vessels or in vehicles bound for the United States. The penalties, virtually unchanged since the 1930s, were increased 2,000%, *i.e.*, from $25 per ounce of marijuana to $500 per ounce, and from $50 per ounce of heroin or cocaine to $1,000 per ounce.

Further, the seizure and forfeiture provisions of section 594 were greatly expanded to include all common carrier conveyances and operators where prohibited merchandise was involved. Section 594 was amended to require a conveyance to be forfeited unless the owner, operator, or person in charge proves that he exercised the ''highest degree of care and diligence'' where violations involved prohibited merchandise contained in unmanifested packages or where the marks, numbers, weights, or quantities disagreed with the manifest, or where the merchandise was concealed in or on the conveyance but not in the cargo.

Although the Customs laws hold common carriers to a high standard of care, Customs has provided guidance and training through the CIP to alleviate the harsh consequences of those laws in the face of a carrier's diligent and good faith effort to comply with them.

III. Customs Modernization, Trade Facilitation, and the Line Release Method of Merchandise Processing

Pursuant to section 448(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1448(b)), the Secretary of the Treasury is authorized to provide by regulation for the issuance of special permits for delivery prior to formal entry (''immediate delivery''). In the late 1980s, Customs established a new automated system for the expedited processing of repetitive, high volume entries of merchandise (''Line Release'') through the use of personal computers and bar code technology (see, T.D. 92–93). Regulations implementing the Line Release processing method are delineated at subpart D of Part 142 (§§ 142.41–142.52), Customs Regulations (19 CFR Part 142, subpart D).

Line Release facilitates the entry of merchandise along the land borders of the United States. However, at certain high-risk locations Customs does not wish to continue to offer line-release processing unless it can be assured that such will not compromise its various law enforcement and drug interdiction responsibilities. Balancing these concerns, Customs proposes that at certain high-risk land border locations, continued importer use of Line Release be conditioned on the imported merchandise being carried by participants in the LBCIP. The additional information made available to Customs by interfacing the

merchandise-data of Line Release with the cargo-driver-conveyance data of the LBCIP will enhance Customs ability to assess the threat of certain commercial transactions more effectively. Only with the continuing assistance of such participatory land border carriers, as shown by the success of the previous CIPs, can Customs be assured that every tool available to protect the United States borders from illicit drug traffic is employed before according the benefits of expedited merchandise processing by means of Line Release.

Proposed Amendments Concerning the LBCIP and Line Release

In this document it is proposed to provide for the new LBCIP in Part 123 of the Customs Regulations, which pertains to Customs relations with Canada and Mexico, by adding a new Subpart H; the current subpart H which contains miscellaneous provisions will be redesignated as new subpart I. The new subpart H of Part 123 will consist of five sections (§§ 123.71—123.75).

Further, it is proposed to provide Customs with the discretion, at certain high-risk locations, to require for the use of Line Release that imported merchandise, which otherwise qualifies for Line Release, be transported over the border by carriers and drivers that participate in the LBCIP. Accordingly, two sections in subpart D (§§ 142.41 and 142.47) will be revised to reference that carrier participation in the LBCIP may be required by Customs for Line Release transactions at particular locations. The public will be informed of these locations by publications in the **Federal Register**. At this time Customs plans that these locations will be limited to those along the Southern border, where the greatest drug threat to the United States is located. This limited implementation of the LBCIP is designed to reduce the threat to public safety presented by the drug problem in that area.

It is noted that participation in either the LBCIP or the Line Release program does not alter the general authority of Customs officials to conduct inspections of participating carriers or their merchandise.

Discussion of Proposed Changes to Regulations

Proposed New Section 123.71

Proposed § 123.71, entitled ''Description of program'', describes, in general terms, the responsibilities of participants in the LBCIP, and cross references subpart D, Part 142 of the Customs Regulations, which provides for expedited processing of repetitive entries by means of Line Release, to indicate that, at certain high-risk locations (the locations to be published in the **Federal Register**), Customs may require for the use of Line Release that imported merchandise, which otherwise qualifies for Line Release, be transported over the border by carriers and drivers that participate in the LBCIP.

Proposed New Section 123.72

Proposed § 123.72, entitled ''Written agreement requirement'', explains the mutual obligations of LBCIP carriers/drivers and Customs. A carrier wishing to participate in the LBCIP must agree to assume certain security responsibilities and a continuing reporting obligation to Customs regarding material changes to its operations. These material changes include changes to the structure and relationships of the carrier's business enterprise and associations, the list of drivers designated or conveyances registered by the carrier within the agreement to transport merchandise into the United States, or any other circumstance that affects the basis of the carrier to participate in the LBCIP. In return, Customs agrees to train carrier personnel and designated drivers, and to consider the application of special administrative procedures when assessing and mitigating drug-related penalties should controlled substances be found aboard a conveyance owned or operated by a participating carrier.

Proposed New Section 123.73

Proposed § 123.73, entitled ''Application to participate'', provides that the application is prepared by the carrier, with pertinent information provided by those drivers designated for participation in the program, and delineates the four items of information needed by Customs to process a request by carriers and their designated drivers to participate in the program at specific ports. The descriptive information required pertains to (1) general business identification and the condition of the business site; (2) designated drivers; (3) conveyance identification; and (4) an affidavit of business character. The driver and conveyance information sought is to enable Customs to conduct background checks and to aid Customs officers at the border crossing in visually identifying LBCIP-authorized drivers and LBCIP-registered conveyances. The affidavit of business character requirement is designed to provide sufficient business background information for Customs to determine if the applicant possesses the requisite business integrity to be given access to Line Release entry processing. Accordingly, applicants will be required to provide complete business histories to Customs, *i.e.*, account for business name changes, reasons for relocations, etc.

Proposed New Section 123.74

Proposed § 123.74, entitled ''Notice of selection; appeal of determination'', provides that Customs shall provide written notice to carrier-applicants concerning their participation in the LBCIP. (Customs will provide written notice to individual designated drivers only in cases where they are not selected to participate in the LBCIP.) This section also lists the grounds for nonselection and references the agency appeal procedures, described at proposed § 123.75, that carriers/drivers must follow if they wish to appeal the decision of nonselection.

Proposed New Section 123.75

Proposed § 123.75, entitled ''Notice of revocation; appeal of decision'', explains the circumstances under which Customs may terminate a carrier's or driver's participation in the LBCIP. This section also describes the agency appeal procedures carriers/drivers must follow if they wish to challenge revocation of their participation in the LBCIP.

Proposed Amendments to Sections 142.41 and 142.47

Section 142.41, which explains Line Release in general terms, and § 142.47, which concerns the voiding of Line Release transactions, are being revised to indicate that, at certain high-risk locations (the locations to be published in the **Federal Register**), Customs may require for the use of Line Release that imported merchandise, which otherwise qualifies for Line Release, be transported over the border by carriers and drivers that participate in the LBCIP.

Comments

Before adopting this proposed regulation as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Suite 3000, Washington, D.C.

Inapplicability of the Regulatory Flexibility Act, and Executive Order 12866

Pursuant to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities, because the proposed amendments concern a voluntary program that will confer a benefit on the trade community. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. This amendment does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to Customs at the address set forth previously.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the information collection burden on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information in these proposed regulations is at § 123.73. The information to be collected is necessary to improve Customs ability to interdict illicit drug shipments along the land border in cooperation with common carriers and their designated drivers who participate in the LBCIP. The likely respondents are individual drivers and commercial carrier organizations that engage in foreign commerce and trade along the land border of the United States.

Estimated total annual reporting and/ or recordkeeping burden: 500 hours.

Estimated average annual burden per respondent/ recordkeeper: 1 hour.

Estimated number of respondents and/or recordkeepers: 500.

Estimated annual frequency of responses: 1.

Part 178 of the Customs Regulations (19 CFR Part 178), which lists the information collections contained in the regulations and control numbers assigned by OMB, would be amended accordingly if this proposal is adopted.

Drafting Information: The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 123

Administrative practice and procedure, Aliens, Canada, Common carriers, Customs duties and inspection, Forms, Imports, International boundaries, Mexico, Motor carriers, Railroads, Reporting and recordkeeping requirements, Vehicles.

19 CFR Part 142

Bonds, Common carriers, Customs duties and inspection, Entry of merchandise, Forms, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons stated above, it is proposed to amend parts 123 and 142 of the Customs Regulations (19 CFR parts 123 and 142), as set forth below:

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for part 123 continues to read as follows, the specific authority citation for § 123.71 is removed, and specific authority citations for §§ 123.71 through 123.75 and for § 123.81 are added, to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1624.

* * * * *

Sections 123.71–123.75 also issued under 19 U.S.C. 1618; Section 123.81 also issued under 19 U.S.C. 1595.

2. Subpart H is redesignated as subpart I and §§ 123.71 and 123.72 are redesignated as §§ 123.81 and 123.82 therein, respectively, and a new subpart H, consisting of §§ 123.71 through 123.75, is added to read as follows:

Subpart H—Land Border Carrier Initiative Program

§ 123.71 Description of program.

The Land Border Carrier Initiative Program (LBCIP) is a program designed to enlist the voluntary cooperation of commercial conveyance entities—and their designated drivers—in Customs effort to prevent the smuggling of controlled substances into the United States. Participation in the LBCIP requires the land or rail commercial carrier (e.g., trucks, buses, locomotives, etc.) to enter into a written agreement with Customs that describes the responsibilities of participants in the LBCIP. The agreement generally provides that the carrier agrees to enhance the security of its facilities and the conveyances employed to transport merchandise. The carrier also agrees to cooperate closely with Customs in identifying and reporting suspected smuggling attempts. In exchange for this cooperation, Customs agrees to provide training to carrier personnel in the areas of cargo and personnel security, document review techniques, drug awareness, and conveyance searches. Customs also agrees that should a controlled substance be found aboard a conveyance owned or operated by a participating carrier, special administrative procedures relating to the assessment and mitigation of drug-related penalties will be followed; the degree of compliance with the terms of the agreement will be considered as an additional positive mitigating factor in any seizure or penalties decision or recommendation. Lastly, at certain high-risk locations, for the use of Line Release, imported merchandise, which otherwise qualifies for Line Release entry (*see*, subpart D of part 142 of this chapter), must be transported over the border by carriers and drivers that participate in the LBCIP. The locations where the use of Line Release will be conditioned on participation in the LBCIP will be published in the **Federal Register.**

§ 123.72 Written agreement requirement.

Commercial carriers desiring to participate in the LBCIP shall enter into a written agreement with Customs regarding the mutual obligations of carrier/driver participants and Customs. The terms and conditions in the written agreement shall generally provide that the carrier-applicant agrees:

(a) To participate in Customs training regarding cargo and personnel security, document review techniques, drug awareness, and conveyance searches;

(b) To establish (1) security systems at the place of business for the safe storage and handling of cargo intended to be imported into the United States, and (2) security procedures aimed at restricting access to transporting conveyances and preventing the unauthorized lading of illegal drugs while the conveyance is enroute to the United States;

(c) To conduct, to the extent allowed by law, employment and criminal history record checks on all personnel designated to participate in the LBCIP and to exercise responsible supervision and control over those personnel;

(d) To ensure that only authorized drivers and properly registered conveyances are utilized in the transportation of merchandise into the United States, and to maintain current lists of such drivers and conveyances for Customs inspection upon request;

(e) To immediately report to the appropriate port director any criminal or dishonest conduct on the part of drivers designated to participate in the LBCIP, or attempt by others to impede, influence, or coerce the carrier or drivers into violating any United States law, including Customs regulations, especially those concerned with trafficking in illegal drugs; and

(f) To notify the appropriate port director in writing by mail within 5 days of any change in legal name, business address, business principals, ownership, drivers, or conveyances that affects the basis for continued participation in the LBCIP or any other provision contained in the written agreement.

§ 123.73 Application to participate.

To request participation in the LBCIP, the carrier-applicant must submit an application containing the information requested in this section. The application must be accompanied by two copies of a LBCIP written agreement (see § 123.72 of this part; upon request, the local port director of Customs will provide copies of an unsigned written agreement) containing original signatures of corporate officers or owners of the common carrier. The application shall be prepared by the common carrier, be signed by corporate officers or owners, and submitted to the port director. If a submitted application does not provide all of the information specified in this section, the processing of the application will either be delayed or the application will be rejected. The application information shall include the following information:

(a) *General business identification and site condition information.* The name and address of the commercial conveyance entity, the names of all principals or corporate officers, the name and telephone number of an individual to be contacted for further information, and a complete and detailed description of the premises where business operations are conducted, to include all working/storage areas and security features employed;

(b) *Designated driver information.* A listing of the drivers designated by the carrier who will be transporting merchandise into the U.S. The listing shall set forth the name(s), address(es), date of birth, nationality, driver's license number, and any other personal identifying information regarding the drivers listed, *e.g.,* social security number (if available), to enable Customs to conduct background checks and to aid Customs officers at the border crossing point in identifying individual LBCIP-authorized drivers;

(c) *Conveyance identification information.* A listing of the conveyances, *e.g.,* trucks and locomotives, that the carrier will utilize to transport merchandise into the U.S. The listing shall set forth the type and make of conveyances, country of registration and license number(s), conveyance-specific identifying markings, *e.g.,* vehicle identification numbers (VINs), and any other general conveyance identifying information, *e.g.,* weight, color, recognizable modifications, etc., to aid Customs officers at the border crossing point in identifying particular LBCIP-registered conveyances; and

(d) *Affidavit of business character.* A statement signed by the carrier-applicant which attests to each principal's or corporate officer's past and present business relations, *e.g.,* a list of past companies worked for and positions held, which fully explains the presence of any past or present crime involving theft or smuggling or investigations into such crimes, or other dishonest conduct on the part of a principal.

§ 123.74 Notice of selection; appeal of determination.

The information provided pursuant to paragraphs (b) through (d) of § 123.73 shall constitute the criteria used to evaluate the competency of the carrier-applicant and its designated drivers to participate in the LBCIP. Following Customs evaluation of the information provided, Customs shall determine the carrier-applicant's and its designated drivers' ability to participate in the LBCIP. In cases of selection, Customs will notify the common carrier in writing and sign and return one of the copies of the written agreement. In cases of nonselection, the written notice of nonselection shall clearly state the reason(s) for denial and recite the applicant's/driver's appeal rights under paragraph (b) of this section.

(a) *Grounds for nonselection.* The port director may deny a carrier's application, or a driver's designation, to participate in the LBCIP for any of the following reasons:

(1) Evidence of any criminal or dishonest conduct involving the carrier, a corporate officer, designated drivers, or other person the port director determines is exercising substantial ownership or control over the carrier operation or corporate officer;

(2) Evidence of improper use of designated conveyances;

(3) Evidence that the written agreement was entered into by fraud or misstatement of a material fact; or

(4) A determination is made that the grant of LBCIP privileges would endanger the revenue or security of the Customs area.

(b) *Appeal of determination.* Carrier-applicants and designated drivers not selected to participate in the LBCIP and who wish to appeal the decision shall either:

(1) Appeal the adverse determination in accordance with the appeal procedure set forth in § 123.75(c) of this part; or

(2) Cure any deficiency in the first application by submitting a new application to the port director who denied the previous application after waiting 60 days from the date of issuance of the first determination.

§ 123.75 Notice of revocation; appeal of decision.

(a) *Revocation.* The port director may immediately revoke a carrier's participation in the LBCIP and cancel the written agreement, or a driver's authorization to participate in the LBCIP, for any of the following applicable reasons:

(1) The selection and written agreement were obtained through fraud or the misstatement of a material fact by the carrier;

(2) The carrier, a corporate officer, any designated driver, or other person the port director determines is exercising substantial ownership or control over the carrier operation or corporate officer, is indicted for, convicted of, or has committed acts which would constitute any felony or misdemeanor under United States Federal or State law. In the absence of an indictment,

conviction, or other legal process, the port director must have probable cause to believe the proscribed acts occurred;

(3) The carrier-participant or a designated driver allows an unauthorized person or entity to use its LBCIP certificate or other approved form of identification;

(4) The carrier-participant or a designated driver misuses authorized conveyances;

(5) The carrier-participant or a designated driver refuses or otherwise fails to follow any proper order of a Customs officer or any Customs order, rule, or regulation relative to continued participation in the LBCIP;

(6) The carrier-participant or a designated driver fails to operate in accordance with the terms of the written agreement; or

(7) Continuation of LBCIP privileges would endanger the revenue or security of the Customs area in the judgment of the port director.

(b) *Notice.* When a decision revoking participation has been made, the port director shall notify the carrier-participant, and, where appropriate, the individual designated driver(s), of the decision in writing. The notice of revocation shall clearly state the reason(s) for revocation and recite the applicant's/driver's appeal rights under paragraph (c) of this section.

(c) *Appeal.* An LBCIP participant who receives a notice of revocation and who wishes to appeal the decision shall file a written appeal with the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, Washington, D.C. 20229, within 10 calendar days of receipt of the notice. The appeal shall be filed in duplicate and shall set forth the participant's responses to the grounds specified by the port director in the notice. Within 30 working days of receipt of the appeal, the Assistant Commissioner, or his designee, shall make a determination regarding the appeal and notify the applicant in writing.

PART 142—ENTRY PROCESS

1. The authority citation for part 142 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. Section 142.41 is amended by adding a sentence at the end to read as follows:

§ 142.41 Line release.

* * * * *

At certain high-risk locations along the land borders of the United States (the locations to be published in the **Federal Register**), which are approved by Customs for handling Line Release, the use of Line Release may be denied by Customs unless the imported merchandise is transported by carriers and drivers that participate in the Land Border Carrier Initiative Program (see, subpart H of part 123 of this chapter).

§ 142.47 [Amended]

3. In § 142.47, the first sentence of paragraph (b) is amended by removing the words ''because of an examination'' and adding, in their place, the words ''for the following reasons: because of an examination, because a carrier transporting the Line Release merchandise is not a participant in the Land Border Carrier Initiative Program (LBCIP), or because a driver or conveyance is not authorized in accordance with the LBCIP''.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: August 7, 1997.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 97–33854 Filed 12–29–97; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 330, and 358

[Docket No. 96N–0420]

Over-The-Counter Human Drugs; Proposed Labeling Requirements; Notice of Availability of Study Data and Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period on specific data.

SUMMARY: The Food and Drug Administration (FDA) is reopening to February 13, 1998 the comment period on specific data related to the February 27, 1997, proposed rule to establish a standardized format for the labeling of over-the-counter (OTC) drug products (62 FR 9024). As part of that rulemaking proceeding, the agency collected data under a study entitled ''Over-the-Counter (OTC) Label Format Preference, Study B.'' (Study B). This document announces the availability of the data and frequency tabulations that summarize the Study B data and reopens the comment period for the OTC rulemaking proceeding to allow an opportunity for comment on Study B.

DATES: Submit written comments on Study B by February 13, 1998.

ADDRESSES: Submit written comments on the information collected in Study B to the Dockets Management Branch (HFA–305), ATTN: Study B, OTC Drug Labeling Data Collection, Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kathryn J. Aikin, Food and Drug Administration, Division of Drug Marketing, Advertising, and Communications (HFD–40), 5600 Fishers Lane, Rockville, MD, 20857, 301–827–2828, Aikink@cder.fda.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 27, 1997 (62 FR 9024), FDA published a proposed rule intended to enable consumers to read and understand OTC drug product labeling and to more effectively apply the information in the labeling to the safe and effective use of such products. An important element of FDA's proposed rule is a standardized labeling format for OTC drug products.

After issuing the proposed rule, FDA published in the **Federal Register** a notice under the Paperwork Reduction Act of 1995 announcing the agency's intention to conduct four studies relating to OTC drug products (62 FR 28482, May 23, 1997). The agency intends at this time to use two of the studies (''Evaluation of Proposed Over-the-Counter (OTC) Label Formats, Study A,'' and ''Over-the-Counter (OTC) Label Format Preference, Study B'') in deliberations on developing a standardized, easy to read and easy to understand, labeling format for OTC drug products (see 62 FR 9024). The data and frequency tabulations for one of these studies, Study B, are now available.

In Study B, consumers were invited to view examples and variations of current OTC label designs. Respondents were asked to indicate their preference for various designs and to evaluate labeling terminology and graphics to help the agency understand how consumers interpret various ways of communicating drug safety and drug effectiveness information. The agency is now seeking comments on the data developed under Study B, including the opinions of the respondents on the various labeling format elements used in the Study. The comments on Study B will be included in the agency's deliberations on developing a final, standardized OTC labeling format regulation.

After the results for Study A are tabulated, the agency will publish a notice in the **Federal Register** announcing when the data and tabulations are available for viewing.

Interested persons may, on or before February 13, 1998, submit written comments on the data developed under Study B to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and labeled ''ATTN: Study B, OTC Drug Labeling Data Collection.'' The data, frequency tabulations, and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic format of the data are available on the internet at: www.fda.gov/CDER/ or can be obtained in electronic form from the Dockets Management Branch at the address listed above.

Dated: December 19, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–33803 Filed 12–29–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 91N–384H and 96P–0500]

RIN 0910–AA19

Food Labeling: Nutrient Content Claims, Definition of Term: Healthy

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is considering whether to institute rulemaking to reevaluate and possibly amend certain provisions of the nutrient content claims regulations pertaining to the use of the term ''healthy.'' This action is in response to a citizen petition from ConAgra, Inc., to amend the definition of this term. The petitioner has raised important issues regarding both the technological feasibility of reductions in sodium levels in foods that currently meet FDA's definition for the term ''healthy'' and the safety of at least some of these foods if there are reductions in their sodium levels. The agency is requesting that data be submitted relative to these issues. In addition, FDA is responding to comments that it received in response to a stay of certain provisions pertaining to the use of the term ''healthy.''

DATES: Written comments by March 16, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joyce J. Saltsman, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5483.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 10, 1994 (59 FR 24232), FDA published a final rule to establish a definition of the term ''healthy'' under section 403(r) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(r)). In that final rule, FDA stated that the fundamental purpose of a ''healthy'' claim is to highlight those foods that, based on their nutrient levels, are particularly useful in constructing a diet that conforms to current dietary guidelines (59 FR 24232 at 24233). In its consideration of comments relative to the proposed qualifying level of sodium to be incorporated into the definition of the term ''healthy,'' the agency rejected comments that suggested that the food should meet the requirements for ''low sodium'' (59 FR 24232 at 24239). The agency stated that such a definition was too restrictive, and that many foods that would otherwise meet the definition of ''healthy'' would be disqualified by a ''low sodium'' requirement. The agency stated that for the claim to be useful, foods that are able to bear the term should be of a sufficient number and variety to help consumers achieve a total diet that is consistent with current dietary recommendations (59 FR 24232 at 24239).

The agency explained that sodium plays an important role in consumer acceptance of a product, and that many products that qualify to bear a claim for ''healthy'' may lose their appeal to consumers because of an unacceptable flavor profile if, in addition to being low in fat and saturated fat, the foods were low in sodium. FDA stated that, if consumers abandon products or add salt to taste at the table, foods bearing the term would lose their usefulness in assisting consumers to achieve dietary recommendations with respect to sodium intake (59 FR 24232 at 24239).

Based on the comments to the proposed rule for ''healthy'' relative to specific sodium levels, the agency adopted qualifying criteria of 360 milligrams (mg) of sodium per reference amount customarily consumed (RACC) in individual foods and 480 mg sodium per RACC in main dish and meal products (59 FR 24232 at 24240). In addition, the agency established a transition period to allow time for industry to reformulate products to meet the new qualifying sodium levels. The agency determined that levels of 480 mg of sodium in individual foods, single ingredient seafood, and game meat, and of 600 mg of sodium in main dishes and meal products, were appropriate levels during the transition period, but that after January 1, 1998 (essentially 3-1/2 years from the date of publication of the final rule), these foods would have to meet the lower sodium qualifying levels to bear the claim ''healthy'' (59 FR 24232 at 24241 and 24245 and see § 101.65(d)(2)(ii), (d)(3)(ii), and (d)(4)(ii) (21 CFR 101.65(d)(2)(ii), (d)(3)(ii), and (d)(4)(ii))).

On December 13, 1996, FDA received a petition from ConAgra, Inc. (the petitioner), 888 17th St. NW., suite 300, Washington, DC 20006, requesting that § 101.65(d) be amended to ''eliminate the sliding scale sodium requirement for foods labeled 'healthy' by eliminating the entire second tier levels of 360 mg sodium for individual foods and 480 mg sodium for meals and main dishes'' (Docket 96P–0500, CP–1, p. 1). Alternatively, the petitioner requested that the effective date of January 1, 1998, in § 101.65(d)(2) through (d)(4) be delayed until such time as food technology catches up with FDA's goals to reduce the sodium content of foods, and until there is a better understanding of the relationship between sodium and hypertension.

The agency was persuaded by the petition that it is in the public interest to stay the effect of the lower standards for sodium in the definition of ''healthy'' in § 101.65 while the agency endeavors to resolve the issues raised by the petition. Therefore, in the **Federal Register** of April 1, 1997 (62 FR 15390), FDA published a final rule that stayed, until January 1, 2000, the effective date of January 1, 1998, in § 101.65(d)(2)(ii) and (d)(4)(ii) for when foods must achieve the lower sodium levels (the ''second tier levels'') to qualify to bear the term ''healthy.'' The agency said that it was issuing the stay to allow itself time to reevaluate the standard, and to evaluate the data contained in the petition and any additional data that it may receive; to conduct any subsequent notice-and-comment rulemaking that it finds is necessary; and to allow ample time for implementation of the rule or of any changes in the rule that may result from the agency's reevaluation.

Accordingly, FDA announced that interested persons may submit comments regarding the appropriateness of the basis for the stay and the feasibility of further lowering the sodium level in foods while maintaining consumer acceptability.

FDA is issuing this advance notice of proposed rulemaking (ANPRM) to respond to the comments that it received in response to the stay and to solicit comments and additional information on whether it should propose to amend the definition of the term ''healthy'' relative to the sodium requirements. Those interested persons that believe that the agency should amend the ''healthy'' definition should address what the amended regulation should require to ensure that the term can appear on a significant number of foods but is not so broadly defined as to lose its value in highlighting foods that are useful in constructing a diet that is consistent with dietary guidelines. Those who believe that the current definition is appropriate and should not be changed should provide data that demonstrate that the definition, with the sodium levels that were scheduled to take effect in January of 1998, is not so restrictive as to effectively preclude use of the term.

II. FDA's Response to Comments on the Stay of Certain Provisions in the Definition of ''Healthy''

FDA received eight comments in response to the stay of the sodium provisions in § 101.65(d)(2)(ii) and (d)(4)(ii) from industry, trade associations, a health care association, and a Federal Government agency. Most of the comments agreed with the agency's decision to stay these provisions until January 1, 2000, to allow the agency time to reevaluate the standard on the basis of available data, including the data contained in the petition and any additional data that the agency may receive.

Three comments disagreed with the agency's decision to stay the regulations. Two of the comments asserted that to stay the sodium level is a disadvantage to those companies that are ready to produce products that qualify to bear the term ''healthy'' under the stayed provisions. One comment stated that the consumer benefits if companies are prepared and allowed to respond to the opportunity to be one of a few or of several to offer and label foods as ''healthy.'' The other comment stated that many companies have demonstrated their ability and willingness to manufacture products that meet the lower second-tier sodium levels in § 101.65(d)(2)(ii) and (d)(4)(ii). The comment stated that reducing sodium intake is one component of a comprehensive nutritional approach to blood pressure lowering that would benefit many Americans.

One comment stated that FDA's decision to stay the lower sodium requirements conflicts with the agency's findings in adopting the ''healthy'' final rule in 1994. The comment noted that, in the final ''healthy'' regulation, FDA arrived at the final sodium criteria based on four key findings: (1) The levels will assist consumers in constructing a diet consistent with dietary guidelines; (2) they provide for a reasonable amount of sodium that enables a wide variety of foods to use the ''healthy'' claim without compromising the appeal of the food; (3) the levels are not so restrictive that they are likely to disqualify many foods that are recommended to be included in a healthy diet; and (4) the level ensures consistency with the U.S. Department of Agriculture (USDA). The comment stated that FDA seems willing to ignore its stated public health goals out of concern that certain foods may not be commercially viable at the levels of sodium determined by FDA to be appropriate.

FDA recognizes that some companies will have reformulated their products to meet the second tier sodium levels in § 101.65(d)(2)(ii) and (d)(4)(ii) by 1998, but it disagrees with the comments that stated that the stay will put these companies at a disadvantage. These companies will be able to make comparative claims that highlight their achievement (e.g., ''25 percent less sodium than Brand X''). As stated in the final rule of April 1, 1997, FDA encourages manufacturers who can meet the lower sodium levels for particular foods to do so even as the agency reevaluates the issues discussed in the petition (62 FR 15390 at 15391).

The agency also disagrees that it is ignoring the basis on which it established the sodium criteria out of concern that certain foods may not be commercially viable at the second-tier sodium levels. The petitioner raised significant questions, based on work that it did after publication of the ''healthy'' final rule, relative to the second of the four key findings noted previously; namely, whether there will be a wide variety of foods that will qualify to use the term ''healthy'' at the second-tier sodium levels that are also acceptable to consumers. Given this fact, but given that the scientific evidence indicates further reductions in fat and sodium intakes will result in meaningful public health gains (62 FR 15390), the agency is staying the second tier levels until it resolves this issue. The agency is concerned that if the technology does not yet exist that permits manufacturers to produce, by January 1, 1998, certain types of reduced sodium foods that are acceptable to consumers, the possibility exits that the term ''healthy'' will disappear from the market. FDA will evaluate the data that it receives on whether the technological barriers to reducing the sodium content to the lower levels required in § 101.65(d)(2)(ii) and (d)(4)(ii), and likewise for § 101.65(d)(3)(ii), are insurmountable or not. The burden is on interested persons to provide convincing evidence to show why the lower sodium levels are not attainable. If they fail to do so, the lower sodium levels will become effective on January 1, 2000.

III. Petition to Amend the Definition of ''Healthy'' and the Agency Response

A. The Petition

The petitioner cited as grounds to amend the definition of ''healthy'': (1) A lack of scientific basis supporting the Daily Reference Value for sodium and the allowable levels of sodium in § 101.65(d); (2) a lack of consumer acceptance of products containing low sodium levels; (3) a lack of acceptable sodium substitutes and the difficulties in manufacturing whole lines of food products at low sodium levels; and (4) FDA's failure to provide notice and comment on the second tier sodium levels in the ''healthy'' definition, to follow directives of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments), and to consider recent scientific studies that raise concerns if too little sodium is consumed (Docket 96P–0500, CP–1, p. 3).–

Relative to the efforts of industry to lower the sodium level of foods, the petitioner stated that the technology does not yet exist to manufacture certain low fat products that both contain the levels of sodium necessary to satisfy the second tier requirements in the ''healthy'' definition and are acceptable to consumers (Docket 96P–0500, CP–1, p. 24). The petitioner argued that there is no adequate substitute for sodium chloride as a provider of a salty taste (Docket 96P–0500, CP–1, p. 36). In addition, the petitioner stated that salt enhances or modifies all flavors of food, and that flavors are dulled or become harsh when salt is reduced.

The petitioner submitted the results of a consumer survey that examined consumer acceptance of three products (hot dogs, macaroni and cheese, and chicken soup) with different sodium

levels (600 mg, 480 mg, and 360 mg sodium per serving) (Docket 96P–0500, CP–1, pp. 25 to 28 and exhibit 161). While the results of the survey show reductions in consumer acceptance at levels of 480 mg sodium, a much greater, i.e., a statistically significant, reduction occurred at levels of 360 mg sodium per serving. As stated by the petitioner, ''If the sodium is so low in a product as to render the product tasteless or even bad tasting, consumers will not eat the product or will reach for the table salt. This is counter productive to the intent of the 1990 amendments and will not result in the goal Congress envisioned; i.e., to improve the eating habits of the American public, but instead could result in even more salt intake—not less'' (Docket 96P–0500, CP–1, p.28).

The petitioner also delineated several technological concerns associated with lowering the sodium levels in foods related to the functional role of salt. For example, the petitioner described the effects of such reductions on the microbial stability of perishable products, on product texture and water binding capacity, on the flavor characteristics of certain ingredients, and on total electrolyte levels, which, the petitioner asserted, play a critical role in product safety (Docket 96P–0500, CP–1, pp. 28 to 30).

The petitioner explained that a number of novel, proprietary, and known technological approaches to replace or potentiate sodium have been evaluated, but that, to date, none have been found to have suitable consumer acceptance. The petitioner stated that potassium chloride, often cited as capable of increasing salty taste, is also known for leaving a bitter aftertaste and has not gained widespread, satisfactory consumer acceptance (Docket 96P–0500, CP–1, p. 41). The petitioner suggested that to achieve the second-tier sodium levels as defined for ''healthy'' will require the ''invention, development, and commercialization of ingredients or components that do not exist today'' (Docket 96P–0500, CP–1, p. 41).

B. The Agency Response

FDA finds that some of the issues raised in the petition regarding the second tier sodium levels appear to have merit. Others do not.

The agency does not find merit in the petition's questions regarding the lack of scientific basis for the usefulness of lowered sodium levels in the diet of the general population. There is significant scientific agreement that lower dietary sodium levels reduce the risk of hypertension (Refs. 1 to 7). The overwhelming majority of experts and of authoritative bodies still favors making recommendations for the general public to moderate sodium intake. This consensus is reflected in the Dietary Guidelines for Americans (Ref. 8).

FDA also finds the petitioner's argument that the agency failed to provide notice and comment on the second tier sodium levels in the ''healthy'' definition to be without merit. The revisions in the sodium requirements for individual foods and main dishes and meal products that were adopted in the ''healthy'' final rule were a logical outgrowth of the proposal (59 FR 24232 at 24241). In the proposal, the agency asked for comments for evaluating whether the definition of ''healthy'' that it had proposed (i.e., foods that do not exceed the disclosure level for sodium or cholesterol and are ''low'' in fat and saturated fat) was appropriate (58 FR 2944 at 2947). FDA acknowledged that its proposed definition of the term ''healthy'' differed from the definition for ''healthy'' that was proposed by USDA (i.e., meat or poultry that contain less than 10 grams (g) of fat, less than 4 g of saturated fat, less than 95 mg of cholesterol, and less than 480 mg of sodium per 100 g and per reference amount customarily consumed for individual foods, and per 100 g and labeled serving for meal-type products) (58 FR 688); and FDA asked for comments on whether it was necessary that FDA and USDA provide uniform criteria for use of this term, or whether different definitions would be appropriate (58 FR 2944 at 2948). As stated previously, the agency received comments that argued that FDA should adopt levels both lower and higher than those that it proposed and those that it adopted (see 59 FR 24232 at 24238 and 24239). FDA considered the information submitted in the comments in arriving at the final levels (see 59 FR 24232 at 24239 to 24241). Thus, the agency provided full and adequate notice of its intent to adopt sodium levels, and the levels that it adopted were the logical outgrowth of the proposal. See *Small Refiner Lead Phase-Down Task Force* v. *USEPA*, 70S F.2d 506, 548–550 (D.C. Cir. 1983).

However, the agency does find that the issues relative to technological and safety concerns of reduced sodium foods present important questions that merit further consideration.

FDA has defined the term ''healthy'' to serve as a means to help consumers to identify food products that will help them meet the guidelines for a healthy diet. Consumers understand the significance of this term, and thus many make purchasing decisions based on its presence on a food label. Because of this fact, manufacturers have an incentive to produce foods that qualify to bear this term. If the petitioner is correct that the technology does not yet exist that will permit manufacturers, by January 1, 1998, to produce certain types of low fat foods at the lower levels of sodium required in § 101.65(d) that are still acceptable to, and safe for, consumers, then the possibility exists that ''healthy'' will disappear from the market for such foods. This result would force consumers who are interested in foods with restricted fat and sodium levels to choose among foods in which an effort has been made to lower the level of one or the other of these nutrients but not necessarily both. If this situation comes to pass, FDA will have squandered a significant opportunity. Therefore, the agency has decided that, before allowing the new sodium levels for ''healthy'' to go into effect, it needs to explore whether it has created an unattainable standard for many types of foods.

Accordingly, FDA is considering whether to institute rulemaking to resolve the issues raised by the petition and to reevaluate the sodium provisions of the nutrient content claims regulations pertaining to the use of the term ''healthy.'' In this notice, the agency is asking for data or evidence on what will happen to the use of the term ''healthy'' in the market if the second-tier sodium levels were in effect. How many products that bear the term ''healthy'' would be eliminated? Would there be other impacts on the number of consumer choices?

The agency is also asking for: (1) Data regarding the technological feasibility of reducing the sodium content of individual foods (including single ingredient seafood and game meats) to 360 mg per RACC and of reducing the sodium content of meals and main dishes to 480 mg sodium per labeled serving, and (2) additional information or views on consumer acceptance of foods with such sodium levels.

With regard to technological feasibility, the agency is asking for information about the availability or lack of availability of acceptable sodium substitutes, the difficulties in manufacturing different lines of food products with lowered sodium levels, and the impact of these sodium levels on the shelf-life stability and the safety of the food. Are there certain types of foods for which it is not possible to reach the second tier levels of sodium? If so, what are these foods? Should FDA make special exemptions for them, or should FDA exclude them from bearing the term ''healthy?''

The agency is also asking for comments on other approaches to

reduce the amount of sodium in foods labeled ''healthy.'' It is important that consumers seeking to eat a health-promoting diet have food choices available that enable them to reduce the amount of sodium in their diet.

If the comments reveal that agreement exists that there are technological hurdles that cannot be overcome at this time for all foods, or certain types of food, the agency is interested in exploring options for maximizing the public health gains that would come from reducing dietary sodium levels. To this end, the agency has identified the following four options that seem to represent the available alternatives.

One, the agency may make no changes to the stayed rule, and the second tier sodium levels in § 101.65(d)(2)(ii) and (d)(4)(ii) will become effective on January 1, 2000. This is the default option should the industry fail to provide evidence, data, or arguments that support amendment of these sections. Adequate support for these levels existed at the time FDA published the May 10, 1994, final rule; and the agency will not hesitate to reconfirm them in the event that the industry fails to provide evidence to persuade FDA to do otherwise.

Two, FDA can propose to amend the definition of ''healthy'' in § 101.65(d)(2)(ii) and (d)(4)(ii) as requested in the petition, and, at the same time, propose to amend § 101.65(d)(3)(ii), to make the current sodium levels for individual foods, single ingredient seafood and game meats, main dishes, and meal products the qualifying levels and to delete § 101.65(d)(2)(ii)(C)(*1*) and (d)(2)(ii)(C)(*2*), (d)(3)(ii)(C)(*1*) and (d)(3)(ii)(C)(*2*), and (d)(4)(ii)(B) in their entirety. FDA is likely to propose this option should the evidence submitted in response to this ANPRM demonstrate that it is technologically impossible to find salt substitutes for use in any type of food that would satisfactorily meet the requirements for taste, texture, safety, and consumer acceptance. However, persons who support this course would have to provide evidence on the efforts that they or others have made to comply with the second tier sodium levels, and they would have to provide a persuasive explanation as to why these reductions in sodium levels are not attainable.

Three, if data and information submitted in response to this ANPRM suggest that technological advancements could be made but would require more time than provided in the stay of the effective date for the tier two sodium reductions (i.e., January 1, 2000, see 62 FR 15390), the agency would consider continuing the stay of the effective date of § 101.65(d)(2) and (d)(4) for an appropriate period of time. To support this option, FDA would expect to receive information demonstrating that progress is being made in the reformulation of ''healthy'' products, as well as information that provides an estimate of how much additional time is needed and that establishes the reasonableness of this estimate.–

Four, the agency could reconsider the sodium levels that it has established as the second tier of the ''healthy'' definition. For example, one possibility might be that an individual food would have to contain 360 mg sodium or less per RACC, or at least 25 percent less sodium per RACC than a market basket norm, so long as the final sodium level does not exceed 480 mg per RACC. For both main dish and meal products, the agency might consider the use of a percent reduction from the disclosure level for main dishes (720 mg sodium) or a percent reduction from the market basket norm. If a 25 percent reduction from the disclosure level of 720 mg were applied, the sodium level per labeled serving for main dishes and meals would be 540 mg (720 mg times 0.25 equals 180, and 720 mg minus 180 mg equals 540 mg).

If the definition is set at the reasonably achievable level of a 25 percent reduction from the disclosure level or from the market basket norm, more foods are likely to be available, and consumers will be able to select from more and different foods to meet dietary guidelines. Furthermore, market competition may spur some manufacturers to exceed this minimal reduction, thereby resulting in foods with even greater reductions. On the other hand, the question that must be considered is whether a 25 percent reduction from the disclosure level or market basket norm is of adequate dietary significance to warrant use of the term ''healthy.''

Based on the foregoing, the agency requests comments on whether it should institute rulemaking to reevaluate the sodium provisions of the nutrient content claims regulations pertaining to the use of the term ''healthy'' and on the other issues raised by the petition.

IV. Executive Order 12866 Analysis

If any rulemaking is proposed as a result of comments received to this ANPRM, FDA will examine the economic implications of the proposed rule as required by Executive Order 12866, which directs agencies to assess all costs and benefits of available regulatory alternatives. Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues.

If FDA institutes rulemaking, the agency will examine the potential costs of the proposed rule, including but not limited to label redesign costs, product reformulation costs, and potential loss of product or product name. FDA will also examine potential benefits including improved access to information regarding the health effects of particular foods. FDA requests information that would aid the agency in responding to the Executive Order.

V. Regulatory Flexibility Analysis

If a rule has a significant impact on a substantial number of small entities, the Regulatory Flexibility Act (5 U.S.C. 601–612) requires agencies to analyze options that would minimize the economic impact of that rule on small entities. According to the Regulatory Flexibility Act, the definition of a small entity is a business independently owned and operated and not dominant in its field. The Small Business Administration (SBA) has set size standards for most business categories through use of four-digit Standard Industrial Classification codes. For most processed foods, SBA considers any entity with fewer than 500 employees to be small. FDA requests information on the number of small entities that use the term ''healthy'' in the labeling of their products. FDA also requests information regarding the impact on small entities of the four options which FDA has identified and described in section III.B of this document. Specifically, FDA is interested in how each option may impact on a small entity's viability.

VI. Comments

Interested persons may, on or before March 16, 1998, submit to the Dockets Management Branch (address above) written comments regarding this ANPRM. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons

between 9 a.m. and 4 p.m., Monday through Friday.

1. DHHS, Public Health Service (PHS), ''The Surgeon General's Report on Nutrition and Health,'' U.S. Government Printing Office, Washington, DC, pp. 139 to 143, 157 to 161, 165, and 167 to 174, 1988.

2. FNB/NAS, *Diet and Health*, National Academy Press, Washington, DC, pp. 355 to 356, 549 to 553 and 556 to 561, 1989.

3. Joint National Committee on Detection, Evaluation, and Treatment of High Blood Pressure, ''The Fifth Report of the Joint National Committee on Detection, Evaluation, and Treatment of High Blood Pressure,'' *Archives of Internal Medicine*, 153:154 to 183, 1993.

4. Nutrition Committee, American Heart Association, ''Dietary Guidelines for Healthy American Adults—A Statement for Health Professionals from the Nutrition Committee, American Heart Association,'' *Circulation*, 94:1795 to 1800, 1996.

5. LSRO, ''Evaluation of Publicly Available Scientific Evidence Regarding Certain Nutrient-Disease Relationships, 4. Sodium and Hypertension,'' Bethesda, MD, December 1991.

6. FNB, National Research Council, ''Recommended Dietary Allowances,'' 10th ed., National Academy Press, Washington, DC, pp. 247–261, 1989.

7. USDA, DHHS, ''Report of the Dietary Guidelines Advisory Committee on the Dietary Guidelines for Americans,'' USDA, Washington, DC, 1995.

8. USDA, DHHS, ''Nutrition and Your Health: Dietary Guidelines for Americans,'' 4th ed., Home and Garden Bulletin No. 232, 1995.

Dated: December 10, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–33921 Filed 12–29–97; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 94P–0168]

Food Labeling; Serving Sizes; Reference Amount and Serving Size Declaration for Hard Candies, Breath Mints

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the nutrition labeling regulations to change the label serving size for the product category ''Hard candies, breath mints'' to one unit. This action is in response to a petition to provide a serving size for breath mints that more accurately reflects the amount customarily consumed per eating occasion. In a related issue, FDA is proposing to allow the declaration of caloric amounts of less than 5 calories in the nutrition label.

DATES: Submit written comments by March 16, 1998. Submit written comments on the information collection provisions by January 29, 1998. See Section V of this document for the proposed effective date of a final rule based on this document.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

Submit written comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Ellen M. Anderson, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5662.

SUPPLEMENTARY INFORMATION:

I. Background

In response to the Nutrition Labeling and Education Act (hereinafter referred to as ''the 1990 amendments''), FDA, among other actions, issued a proposal on serving sizes (56 FR 60394, November 27, 1991). FDA proposed a reference amount customarily consumed per eating occasion (hereinafter referred to as ''reference amount'') of 15 grams (g) for ''Baking candies * * * and hard candies'' but no separate reference amount for breath mints (56 FR 60394 at 60419).

The agency received several comments from hard candy manufacturers opposing the uniform 15-g reference amount for hard candies (58 FR 2229 at 2266, January 6, 1993). The comments stated that the 15-g reference amount would result in the serving size of breath mints being the entire package, and that, therefore, breath mints should have a separate smaller reference amount. Most comments recommended a reference amount of one piece. One comment disagreed, however, arguing that several pieces may be consumed during one eating occasion. None of the comments that requested a reference amount based on pieces included any data to support their request.

One comment submitted data from a home use mail survey that supported 2 g as the customarily consumed amount for large breath mints. FDA carefully examined the data from this survey and noted that it only tested the manufacturer's own brands of candies and breath mints. However, in the final rule for serving sizes, because these data were the only breath mint data available to FDA, the agency created a separate product category for ''Hard candies, breath mints'' with a reference amount of ''2 g'' (58 FR 2229 at 2297). The 2 g reflected the weight of one breath mint (Ref. 1).

II. The Petition and Other Communications

FDA received a petition dated April 20, 1994 (Docket No. 94P–0168), from Ferrero USA, Inc., requesting that the agency amend the product category for ''Sugars and Sweets: Hard candies, breath mints'' to create a separate product category with a 0.5-g reference amount for small breath mints (weighing 0.5 g or less) that fulfill the same breath-freshening function as a larger mint. The manufacturer submitted study data not only on small breath mints but also on five large breath mint products. The manufacturer asserted that the data establish that their small breath mints (0.38 g each) are consumed one mint at a time, and that the majority of consumers never eat 2 g of small breath mints, equivalent to five mints, during an entire day.

The company also stated that consumers chose the small breath mints for their breath freshening ability and lower caloric content. The manufacturer stated that their trademarked slogan has been ''The 1 1/2 calorie breath mint,'' based on a serving size of ''1 mint,'' and that changing this slogan would result in an economic hardship. The petitioner concluded that the serving size for small breath mints should be ''1 mint'' and requested that FDA create a separate product category for small breath mints with a reference amount of 0.5 g.

The agency received correspondence opposed to, and in support of, this petition. The opposing comments (Docket No. 94P–0168, comments 1 and 2) stated: (1) That the facts presented in the petition did not support the 0.5 g (one mint) reference amount because nearly half of the users surveyed consumed two or more mints per occasion; (2) that the attempt to establish such an extremely narrow reference category to accommodate a single product runs counter to one of the principal objectives of the 1990 amendments, to provide consistency in labeled serving sizes among comparable and interchangeable products; (3) that ''breath-freshening function'' is not the

statutory standard for the reference amount category and would inappropriately require FDA to apply subjective criteria to determine the correct product category for small breath mints; (4) that basing the reference amount on breath-freshening function would be a dangerous precedent for the agency because, unlike artificial sugar and salt substitutes, there is no established methodology for determining breath-freshening function; (5) that granting the petition could result in the agency being inundated by requests for new or alternate serving sizes for products purporting to have a functional property; and (6) that the petitioner was making a mockery of FDA's petition process by already using an illegal ''1 mint'' serving size.

In rebuttal (Docket No. 94P–0168, amendment 1 and comment 3), the petitioner argued: (1) That the change recommended in the petition would make it easier for breath mint consumers to compare the nutritional composition of competing breath mint products, regardless of size, on a per mint basis; (2) that comparison on a mint-to-mint basis is in keeping with the intent of the 1990 amendments because it would accurately reflect the customarily consumed amounts of small breath mints that are comparable to large mints in terms of breath freshening; (3) that the functional utility of breath mints is a necessary element of the product category definition because the consumption behavior of consumers is directly related to this functional utility, analogous to other functional food products such as artificial sweeteners and salt substitutes; (4) that the burden of determining breath-freshening ability would be on the manufacturer and not on FDA; (5) that there is a well-established and accepted scientific methodology for testing breath malodor (included in the petition); (6) that the underlying concept in reference amount issues is the amount customarily consumed; and (7) that the data conclusively establish that, for the specific product researched, the majority of consumers eat one mint per eating occasion to attain the same breath-freshening benefit they would attain by consuming one larger breath mint.

In addition, the agency received letters from two other manufacturers of breath mint products requesting a ''1 mint'' serving size. FDA received one letter and spoke with a manufacturer of breath mints that are even smaller (0.13 g each) than those discussed in the petition (Refs. 2 and 3). The letter indicated that under current regulations, the serving size for the company's product would need to be expressed as ''15 pieces (2 g).'' The manufacturer stated that the tablets are promoted as breath mints, that they have been specially formulated to be extremely potent, and that it is the manufacturer's intent that the consumer need only use one tablet per occasion to achieve fresh breath. The manufacturer objected to the 2-g reference amount because it felt it would be subject to unlimited liability if the serving size remains 15 tablets for its ''extremely potent'' breath mint product. The company requested that it be permitted to express the serving size as one piece. No data were submitted with the request.

The agency received another letter from a manufacturer of breath mints that are larger (0.67 g each) than those discussed in the petition (Ref. 4). This letter stated that, in accordance with current regulations, the serving size for the company's product is expressed as ''3 pieces (2 g).'' The manufacturer stated that the mints are characterized by strong flavor and are typically consumed one at a time. The manufacturer objected to being required to list their serving size as three mints if larger and smaller mints would be permitted to use a one mint serving size. The manufacturer stated that it would support a proposal to establish a one mint serving size for breath mints. No data were submitted in this letter.

III. Basis for the Proposed Action on Serving Size

A. Evaluation of the Appropriateness of the Current Serving Size Declaration on the Label of Small Breath Mints

As discussed in section I of this document, in the final rule for serving sizes (58 FR 2229 at 2297), data on large breath mints were used to establish the 2-g reference amount for the ''Hard candies, breath mints'' product category.

FDA has carefully reviewed the evidence (e.g., study design, results, conclusions) supporting the petitioner's request that FDA create a product category for small breath mints with a reference amount of 0.5 g (Refs. 5, 6, and 7). The analysis submitted with the petition was based on ''the number of pieces put into the mouth at one time.'' However, reference amounts are based on ''amounts customarily consumed per eating occasion.'' Therefore, FDA reanalyzed the data to estimate the number of mints customarily consumed at a single eating occasion. The number of pieces put into the mouth at one time may not always represent the number of pieces customarily consumed at a single eating occasion. For example, a person may eat 10 jelly beans within a few minutes but may only put one piece in his or her mouth at a time and finish each one before eating another. This situation would still represent 10 jelly beans eaten during a single eating occasion.

Based on the agency's reanalysis of the data, FDA determined that, when compared with larger breath mints, people typically eat more small breath mints at a single eating occasion. The agency calculated that the mean, median, and modal intakes in the petitioner's survey round to two mints customarily consumed per eating occasion. This is greater than the one mint reported by the petitioner, but much less than the serving size declaration of five breath mints currently required on the label. Therefore, the data suggest that serving sizes near 2 g are too large for small breath mint products.

B. Consideration of a Different Reference Amount for Breath Mints

Many of the issues raised by the petitioner and in comments objecting to the petition (e.g., marketing position, trademarked slogan, and established serving size declarations) are irrelevant with regard to determining the reference amount customarily consumed per eating occasion.

''Breath-freshening'' functionality is important in selecting the appropriate product category (e.g., ''Hard candies, breath mints'' as opposed to ''Hard candies, other''). However, neither the petition nor the comments demonstrated that ''breath freshening efficacy'' and ''breath malodor elimination'' are related to consumption. Therefore, the extent of breath freshening of these various products is immaterial in terms of establishing an appropriate reference amount for the product category ''Hard candies, breath mints.''

Based on the current reference amount of 2 g for the ''Hard candies, breath mints'' product category, the various breath mint products discussed with the agency would have the following serving sizes:

TABLE 1.—SERVING SIZES FOR BREATH MINTS

Large breath mints—	1 mint (2 g)
Medium breath mints—	3 mints (2 g)
Small breath mints— ..	5 mints (2 g)
Very small breath mints—	15 mints (2 g)

In response to the petition, FDA has considered various options for the breath mint product category and the

advantages and disadvantages of the various approaches. The agency searched for a rationale that is applicable to all breath mint products and that would not penalize small manufacturers who cannot easily obtain supportive data.

Because consumption is the basis for establishing a reference amount, the objection in the opposing comments that nearly half of the users surveyed consumed two or more mints per occasion remains a valid concern. As stated earlier, FDA's reanalysis of the data on small breath mints suggests that the consumption per eating occasion is, in fact, closer to two mints than to one mint (Ref. 5).

However, FDA is not convinced that creating a separate category for small breath mints in Table 2 of § 101.12 (b) (21 CFR 101.12(b)), as suggested by the petitioner, is the most reasonable option for achieving appropriate serving sizes for labeling all of the different breath mint products on the market. The agency is reluctant to create a 0.5 g-reference amount for small breath mints (as requested by the petitioner) or a reference amount equivalent to ''2 pieces'' (as supported by the data). These options may not be appropriate for other breath mint products and could result in a proliferation of requests for additional product categories for other breath mints. This action could evolve into reference amounts that are brand dependent (e.g., separate reference amounts for each size or brand of breath mints) and would require each manufacturer to obtain independent data to demonstrate how their particular product is used.

The agency is not convinced by the data presented that there is justification for revising the current reference amount of 2 g because the majority of breath mint packages sold to consumers contain breath mints whose weight is closer to 2 g (the weight of large breath mints) than to any other value (Ref. 8). Furthermore, as discussed in section III.A of this document, the data available to the agency indicate that some people may consume more small breath mints than large breath mints at a single eating occasion, resulting in an amount consumed that is greater than the weight of an individual small breath mint. Accordingly, FDA tentatively concludes that there is not a sufficient basis for revising the current reference amount of ''2 g.''

However, the agency is concerned about the apparent inappropriateness of the resulting serving sizes on the labels of small and very small breath mints (e.g., 5 small breath mints or 15 very small breath mints per serving). The comments that the agency has received from manufacturers, as well as the limited consumption data available to FDA, all suggest that the products were designed to be consumed singly or in small numbers, and that consumers do, in fact, limit their consumption to such amounts.

Therefore, the agency is persuaded that it is worthwhile to consider requiring the serving size on the label of all breath mints to be declared as one mint to more accurately reflect consumption across the broad spectrum of breath mint sizes, rather than declaring the serving size in terms of the number of mints closest to the 2-g reference amount, an amount reflective of products at only one end of the spectrum. A way to accomplish this approach would be to revise Footnote 9 to Table 2 in § 101.12 to require the serving size declaration on the label of breath mints to be expressed as ''1 piece (____ g)'' similar to the current declaration of ice cream cones, eggs, and chewing gum but to keep 2 g as the reference amount.

This action would allow comparison of breath mints on a mint-to-mint basis and would more accurately reflect consumption of this type of product. A serving size declaration of ''1 mint (2 g)'' would continue to reflect the consumption data for the large breath mints that were the basis for the current reference amount. In addition, for the petitioner's small breath mints, a serving size declaration of ''1 mint (0.4 g)'' is closer to the amount consumed (i.e., 2 mints based on FDA's reanalysis) than a declaration of ''5 mints (2 g).''

Accordingly, while proposing to maintain a fixed value (2 g) as the reference amount, FDA is proposing to revise § 101.12, Table 2, Footnote 9 to state ''Label serving sizes for ice cream cones, eggs, and breath mints of all sizes will be 1 unit.'' Such action will allow for efficient enforcement of the act by maintaining one subcategory in Table 2 for all breath mints, yet it will prevent consumer confusion that could result from inappropriately high numbers of pieces specified for a serving on the nutrition label.

At the same time, by maintaining a fixed value (2 g) as the reference amount, this action provides for a consistent basis for nutrient content and health claims, although in all likelihood the reference amount will have little impact on most claims. For example, because the reference amount is small (i.e., 30 g or less or 2 tablespoons or less), products making ''low'' claims (e.g., ''low calorie'') must meet the claim criteria based not only on the amount of the nutrient per reference amount but also per 50 g of product. The per 50-g criterion will be the most difficult for breath mints to meet and will, therefore, be the determining factor. For ''free'' claims, products must meet the claim criteria based on the amount of the nutrient per serving size (one piece) and per reference amount (2 g). Thus, a ''calorie free'' claim would only be permitted on products containing less than 5 calories per breath mint and per 2 g of breath mints (e.g., in the case of small breath mints, the product would have to have less than 5 calories per five pieces, so a small breath mint with 1 1/2 calories per mint would not be ''calorie free'').

IV. Basis for the Proposed Action on Declaration of Calories

FDA's regulations permit a claim about the amount of a nutrient in a product (e.g., ''1 tablet has 5 calories'') provided that: (1) It is a factual statement that is not false or misleading; and (2) it does not in any way implicitly characterize the level of the nutrient as being high or low (§ 101.13(i)(3)). In addition, the amount claimed must be accompanied by a referral statement (e.g., ''See back panel for nutrition information'') (§ 101.13(g)). These claims may be based on the amount of the nutrient in a serving or unit of the product. To not be misleading, claims based on the amount of nutrient in a unit (e.g., one mint) must identify the unit if the serving size declared on the label is not one unit.

Under the agency's nutrition labeling regulations, products containing less than 5 calories per serving must either declare the calories to the nearest 5-calorie increment, i.e., as ''5 calories,'' or as ''0'' (§ 101.9(c)(1)). Accordingly, calorie values of 2.49 or less per serving would always be declared in the nutrition label as ''0,'' while values of 2.5 to 4.99 calories could be declared as ''0'' or rounded to ''5.'' FDA set the rounding rules because it concluded that the caloric contribution of foods could not be determined with sufficient accuracy to justify smaller increments (55 FR 29487 at 29503, July 19, 1990). In addition, FDA concluded that amounts of less than 5 calories per serving are trivial and of no physiological significance (56 FR at 60421 at 60438, November 27, 1991).

The agency is aware, however, that amount claims are being made under § 101.13(i)(3) on labels of breath mints stating that the mints have 1 1/2 calories, a specific amount that is not allowed to be declared on the nutrition label.

While the regulations do not specifically state that the quantitative

amount specified in an amount claim must be consistent with the amount declared on the nutrition label, the agency has stated its belief in the importance of consistency between nutrient content claims and information in the nutrition label to prevent consumer confusion (technical amendments published on August 18, 1993 (58 FR 44020 at 44024)). This expectation of consistency appears to have been shared by at least one comment who suggested that ''FDA should permit the use of amount and percentage statements to convey information regarding the calorie content per serving of food, consistent with the number of calories that appear on the nutrition panel'' (58 FR 2302 at 2309).

FDA still considers the difference between 0 and 5 calories to be insignificant. However, the agency does not consider it likely that consumers would be misled by a calorie declaration of less than 5 calories. Results of an FDA nutrition label format study found that consumers respond to the absolute size of numbers used to describe nutrient amounts. Subjects estimated the significance of all small numbers as small (Refs. 9 and 10).

Therefore, the agency tentatively concludes that consumers will interpret any specific calorie declaration of less than 5 calories as implying that the food has an insignificant amount of calories. To resolve the discrepancy of declaring 0 calories on the nutrition label and amounts such as 1, 1.5, or 2 calories in an amount claim elsewhere on the label and to allow manufacturers more flexibility in label statements, FDA is proposing to modify § 101.9(c)(1) to state that, if a manufacturer provides a claim about the amount of calories in a food for which a serving of a product contains less than 5 calories per serving, e.g., ''1 calorie per mint,'' the number of calories declared in the nutrition label shall be consistent with the amount declared in the claim. FDA is also proposing to amend § 101.9(c)(1) to allow the nutrition label on any product with less than 5 calories per serving to optionally declare the exact amount of calories in lieu of zero calories. This added flexibility will allow any products with less than 5 calories per serving to declare the exact amount of calories rather than just those products that make amount claims on the label.

V. Effective Date

The agency periodically establishes by final rule in the **Federal Register** uniform effective dates for compliance with food labeling requirements (see, e.g., the **Federal Register** of December 27, 1996 (61 FR 68145)). FDA proposes that any final rule that may issue based upon this proposal become effective in accordance with a uniform effective date for compliance with food labeling requirements, which is established by final rule in the **Federal Register** and which is not sooner than 1 year following publication of any final rule based upon this proposal. The final rule would apply to affected products initially introduced or initially delivered for introduction into interstate commerce on or after its effective date. However, FDA notes that it generally encourages industry to comply with new labeling regulations as quickly as feasible. Thus, when industry members voluntarily change their labels, it is appropriate that they respond to any new requirements that have been published as final regulations up to that time. On the other hand, if any industry members can foresee that the proposed effective date will create particular problems, they should bring these problems to the agency's attention in comments on this proposal.

VI. Environmental Impact

The agency has determined under 21 CFR 25.32(p) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Executive Order 12866 Analysis

FDA has examined the economic implications of the proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select the regulatory approach which maximizes net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. FDA finds that this proposed rule is not a significant rule as defined by Executive Order 12866.

This proposed rule will cause the labels of small breath mints to be revised. FDA estimates that there are 18 brands and 125 labels of breath mints of all sizes. Of those breath mints for which FDA has information regarding the size of the product, there are 4 firms producing 5 brands of small breath mints, or 30 distinct small breath mint labels. For breath mint products, the average administrative, redesign, and inventory disposal costs for a labeling change of this type, with a 1-year compliance period are $500 per label, or a total of $15,000.

The benefit of this proposed regulation is that manufacturers can provide a serving size that is more appropriate for small breath mints providing more accurate information to consumers.

VIII. Small Entity Analysis

FDA has examined the economic implications of the proposed rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze options that would minimize the economic impact of that rule on small entities. Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the agency certifies that this proposed rule will not have a significant impact on a substantial number of small entities.

According to the Regulatory Flexibility Act, the definition of a small entity is a business independently owned and operated and not dominant in its field. The Small Business Administration has set size standards for most business categories through use of four-digit Standard Industrial Classification codes. FDA estimates that three of the firms producing small breath mints are small (under 500 employees). One of these small entities is the petitioner. FDA has received information from the other two small entities stating that they are in favor of granting the petition. Because FDA is providing these small entities with exactly what they requested, the agency concludes that this rule will not result in a significant impact on a substantial number of small entities.

IX. The Paperwork Reduction Act of 1995

This proposed rule contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection requirements are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and

completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Nutrition Labeling; Declaration of Caloric Amounts and Serving Sizes for Breath Mints.

Description: Section 403(q) of the act requires that the label or labeling of a food bear nutrition information, including information on the number of calories present in the product and the serving size and number of servings per container. FDA has issued regulations in § 101.9(c)(1) that require that the nutrition facts panel of the food label disclose the number of calories in the food. FDA has issued regulations in § 101.9(d)(3) that require that the nutrition facts panel disclose the serving size of the food product and the number of servings in each package.

The regulations set forth in this proposed rule would modify the rounding rules for calories in § 101.9(c)(1) to allow the voluntary declaration of caloric amounts of less than 5 in the nutrition label. The regulations would also require that the number of calories declared on the nutrition label of a food product be consistent with any claims about caloric content that are made in its labeling. As a result of this proposed rule, manufacturers and other producers of products that make claims that their products contain between 1 and 5 calories would be required to change the declaration of the amount of calories on the nutrition label. Finally, as a result of the proposed rule, manufacturers of small breath mints would be required, under § 101.9(b), to change the serving size disclosed on the labels of their products and, under § 101.9(c) and (d), the amounts and daily values for nutrients listed in the nutrition label for their products.

Description of Respondents: Persons and businesses, including small businesses.

TABLE 2.—ESTIMATED ADDITIONAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Total No. of Responses	Hours per Response	Total Hours	Total Operating Costs
101.9(b) and (c)(1)	4	30	1	30	$15,000

[1] There are no capital or maintenance costs associated with this collection of information.

The proposed modification of the rules for the declaration of the amount of calories and the proposed change of the label serving size on the nutrition facts panel would result in a one-time burden created by the need for firms to revise their labels. In addition to changing the statement of calories and the serving sizes, firms would have to recalculate the number of servings per container and any nutrient amounts and Daily Values affected by the change in serving size. As noted in section VII of this document, Executive Order 12866 Analysis, FDA is aware of only four firms that currently market small breath mints. These are the only firms that would be affected by this proposed rule. FDA estimates that there are approximately 30 labels for products marketed by these firms that would require revision because of this proposed rule. FDA estimates that these firms would require an average of 1 hour per label to comply with the requirements of a final rule based on this proposal. Further, as discussed in section VII of this document, Executive Order 12866 Analysis, the proposed rule would result in a one-time operating cost of $500 per label or a total estimated operating cost of $15,000.

In compliance with section 3507(d) of the PRA (44 U.S.C. 3507(d)), the agency has submitted the information collection requirements of the proposed rule to OMB for review. Interested persons are requested to send comments regarding information collection by January 29, 1998, to the Office of Information and Regulatory Affairs, OMB (address above), ATTN: Desk Officer for FDA.

X. Comments

Interested persons may, on or before March 16, 1998, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

XI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum to file, from Lori A. LeGault and Ellen M. Anderson, Center for Food Safety and Nutrition (CFSAN), FDA, August 28, 1997.

2. Letter to F. Edward Scarbrough, CFSAN, FDA, from Richard J. Litner, Nutrinfo Corp., August 24, 1994.

3. Memorandum of telephone conversation between Ellen M. Anderson, CFSAN, FDA, and Richard J. Litner and David Kiernan, Nutrinfo Corp., November 4, 1994.

4. Letter to F. Edward Scarbrough, CFSAN, FDA, from Sheryl A. Marcouiller, Kraft Foods, June 28, 1996.

5. Memorandum from Sara Fein, CFSAN, FDA, to Lynn McFerron, CFSAN, FDA, September 9, 1994.

6. Memorandum from Sara Fein, CFSAN, FDA, to Lori LeGault, CFSAN, FDA, February 5, 1996.

7. Memorandum to file from Lori A. LeGault and Ellen M. Anderson, CFSAN, FDA, August 28, 1997.

8. Memorandum to file from Thomas B. O'Brien, Mary M. Bender, and Ellen M. Anderson, CFAN, FDA, August 28, 1997.

9. Memorandum from Sara B. Fein, CFSAN, FDA, to Virginia Wilkening, CFSAN, FDA, May 13, 1997.

10. Levy, Alan S., Sara B. Fein, and Raymond E. Schucker, ''Performance Characteristics of Seven Nutrition Label Formats,'' *Journal of Public Policy and Marketing*, 15 (1)(Spring 1996): 1–15.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371.

2. Section 101.9 is amended by revising paragraph (c)(1) introductory text to read as follows:

§ 101.9 Nutrition labeling of food.

* * * * *

(c) * * *

(1) ''Calories, total,'' ''Total calories,'' or ''Calories'': A statement of the caloric content per serving, expressed to the nearest 5-calorie increment, up to and including 50 calories, and 10-calorie increment above 50 calories, except that amounts less than 5 calories may be expressed either as zero or as the exact amount. However, if a manufacturer provides a claim under § 101.13(i) about the amount of calories in a serving of a product containing less than 5 calories (e.g., ''1 calorie per mint''), the number of calories declared in the nutrition label shall be consistent with that declared in the amount claim (e.g., ''1''). Energy content per serving may also be expressed in kilojoule units, added in parentheses immediately following the statement of the caloric content.

* * * * *

3. Section 101.12 is amended in paragraph (b), Table 2, under the ''Sugars and Sweets'' category by revising the entry for ''Hard candies, breath mints'' and Footnote 9 to read as follows:

§ 101.12 Reference amounts customarily consumed per eating occasion.

* * * * *

(b) * * *

TABLE 2.—REFERENCE AMOUNTS CUSTOMARILY CONSUMED PER EATING OCCASION: GENERAL FOOD SUPPLY [1] [2] [3] [4]

Product category	Reference amount	Label Statement [5]
* *	* * *	* *
Sugars and Sweets:		
* *	* * *	* *
Hard candies, breath mints [9]	2 g	____ piece(s) (____ g)
* *	* * *	* *

[1] These values represent the amount (edible portion) of food customarily consumed per eating occasion and were primarily derived from the 1977–1978 and the 1987–1988 Nationwide Food Consumption Surveys conducted by the U.S. Department of Agriculture.

[2] Unless otherwise noted in the Reference Amount column, the reference amounts are for the ready-to-serve or almost ready-to-serve form of the product (i.e, heat and serve, brown and serve). If not listed separately, the reference amount for the unprepared form (e.g., dry mixes; concentrates; dough; batter; fresh and frozen pasta) is the amount required to make the reference amount of the prepared form. Prepared means prepared for consumption (e.g., cooked).

[3] Manufactures are required to convert the reference amount to the label serving size in a household measure most appropriate to their specific product using the procedures in 21 CFR 101.9(b).

[4] Copies of the list of products for each product category are available from the Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

[5] The label statements are meant to provide guidance to manufacturers on the presentation of serving size information on the label, but they are not required. The term ''piece'' is used as a generic description of a discrete unit. Manufacturers should use the description of a unit that is most appropriate for the specific product (e.g., sandwich for sandwiches, cookie for cookies, and bar for ice cream bars). The guidance provided is for the label statement of products in ready-to-serve or almost ready-to-serve form. The guidance does not apply to the products which require further preparation for consumption (e.g., dry mixes, concentrates) unless specifically stated in the product category, reference amount, or label statement column that it is for these forms of the product. For products that require further preparation, manufacturers must determine the label statement following the rules in § 101.9(b) using the reference amount determined according to § 101.12(c).

[6] Includes cakes that weigh 10 g or more per cubic inch.

[7] Includes cakes that weigh 4 g or more per cubic inch but less than 10 g per cubic inch.

[8] Includes cakes that weigh less than 4 g per cubic inch.

[9] Label serving size for ice cream cones, eggs, and breath mints of all sizes will be 1 unit. Label serving size of all chewing gums that weigh more than the reference amount that can reasonably be consumed at a single-eating occasion will be 1 unit.

* * * * *

Dated: December 17, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–33926 Filed 12–29–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209463–82]

RIN 1545–AV82

Required Distributions From Qualified Plans and Individual Retirement Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains amendments to the existing proposed regulations under section 401(a)(9) that make changes to the rules that apply if a trust is named as a beneficiary of an employee's benefit under a retirement plan. These proposed regulations will affect administrators of, participants in, and beneficiaries of qualified plans, institutions which sponsor and individuals who administer individual retirement plans, individuals who use individual retirement plans, simplified employee pensions and SIMPLE Savings Plans for retirement income and beneficiaries of individual retirement plans; and employees for whom amounts are contributed to section 403(b) annuity contracts, custodial accounts, or retirement income accounts and beneficiaries of such contracts and accounts.

DATES: Written comments and requests for a public hearing must be received by March 30, 1998.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG–209463–82),

room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG–209463–82), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax__regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Thomas Foley at (202) 622–6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by March 2, 1998. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in Question and Answer D–7 of § 1.401(a)(9)–1. This information is required for a taxpayer who wants to name a trust and treat the underlying beneficiaries of the trust as designated beneficiaries of the taxpayer's benefit under a retirement plan or an individual retirement plan (''IRA''). The taxpayer must provide a copy of the trust instrument or IRA trustee, custodian, or issuer, or provide a list of all the beneficiaries of the trust, certify that, to the best of the taxpayer's knowledge, this list is correct and complete, and agree to provide a copy of the trust instrument upon demand. In addition, other related requirements for the beneficiaries of the trust to be treated as designated beneficiaries must be satisfied. If the trust instrument is amended at any time in the future, the taxpayer must, within a reasonable time, provide a copy of each such amendment, or provide corrected certifications to the extent that the amendment changes the information previously certified. In addition, by the end of the ninth month after the death of the taxpayer, the trustee of the trust must provide a copy of the trust to the plan administrator or IRA trustee, custodian, or issuer, or provide a list of all the beneficiaries of the trust, certify that, to the best of the taxpayer's knowledge, this list is correct and complete, and agrees to provide a copy of the trust instrument upon demand. The collection of information is required to obtain a benefit. The likely respondents are individuals or households.

Estimated total annual reporting hours is 333 hours.

The estimated average burden per respondent is 20 minutes.

The estimated total number of respondents is 1,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On July 27, 1987, Proposed Regulations (EE–113–82) under sections 401(a)(9), 403(b), 408, and 4974 of the Internal Revenue Code of 1986 were published in the **Federal Register** (52 FR 28070). Those proposed regulations provide guidance for complying with the rules relating to required distributions from qualified plans, individual retirement plans, and section 403(b) annuity contracts, custodial accounts, and retirement income accounts. This document contains amendments to proposed § 1.401(a)(9)–1 (hereinafter referred to as the Existing Proposed Regulations) that was included in EE–113–82. Specifically this document contains amendments to Q&As D–5 and Q&A D–6 of the Existing Proposed Regulations which prescribe specific requirements that must be met when a trust is named as a beneficiary of an employee's benefit under a plan, and adds a new Q&A D–7 to the Existing Proposed Regulations. Proposed § § 1.408–8 and 1.403(b)–2 (also included in EE–113–82) provide that the provisions of proposed § 1.401(a)(9)–1 generally apply to individual retirement plans, and section 403(b) annuity contracts, custodial accounts, and retirement income accounts. Accordingly, these amendments and additions also generally apply to such plans, contracts, and accounts.

The amendments and additions to the Existing Proposed Regulations in these proposed regulations are issued in response to comments and questions received regarding the Existing Proposed Regulations with respect to section 401(a)(9). Treasury and the IRS continue to welcome additional comments concerning the Existing Proposed Regulations and the other sections of EE–113–82.

As in the case of the Existing Proposed Regulations and the other sections of EE–113–82, taxpayers may rely on these proposed regulations for guidance pending the issuance of final regulations. If, and to the extent, future guidance is more restrictive than the guidance in these proposed regulations, the future guidance will be applied without retroactive effect.

Explanation of Provisions

Overview

Section 401(a)(9)(A) provides that, in order for a plan to be qualified under section 401(a), distributions of each employee's interest in the plan must commence no later than the ''required beginning date'' for the employee and must be distributed over a period not to exceed the joint lives or joint life expectancy of the employee and the employee's designated beneficiary. Section 401(a)(9)(B) provides that if distribution does not commence prior to death in accordance with section 401(a)(9)(A), distributions of the employee's interest must be made within 5 years of the employee's death or, generally, commence within one year of the employee's death and be

made over the life or life expectancy of the designated beneficiary.

Section 401(a)(9)(E) defines the term ''designated beneficiary'' as an individual designated as a beneficiary by the employee. The Existing Proposed Regulations provide that, for purposes of section 401(a)(9), only individuals may be designated beneficiaries. A beneficiary who is not an individual, such as the employee's estate, may not be a designated beneficiary for purposes of determining the minimum required distribution, but nevertheless may be designated as the employee's beneficiary under the plan. If a beneficiary who is not an individual is designated to receive an employee's benefit after death, the employee is treated as having no designated beneficiary when determining the required minimum distribution. In that case, under section 401(a)(9), distributions commencing before death must be made over the employee's single life or life expectancy and distributions commencing after death must be made within 5 years of the employee's death.

However, the Existing Proposed Regulations provide that if a trust is named as a beneficiary of an employee's benefit under the plan, the underlying beneficiaries of the trust may be treated as designated beneficiaries for purposes of section 401(a)(9) if certain requirements are satisfied. In response to comments, these proposed regulations modify these trust beneficiary requirements as explained below by:

- Permitting the designated beneficiary of a revocable trust to be treated as the designated beneficiary for purposes of determining the minimum distribution under section 401(a)(9), provided that the trust becomes irrevocable upon the death of the employee.
- Providing relief from the requirement that the plan be provided with a copy of the trust document if certain certification requirements are met.

Irrevocability of Trust

The Existing Proposed Regulations generally provide that a trust must be irrevocable as of the employee's required beginning date in order for the beneficiaries of the trust to be treated as designated beneficiaries under the plan for purposes of determining the distribution period under section 401(a)(9)(A). Commentators have indicated that most trusts established for estate planning purposes and designated as the beneficiary of an employee's plan benefits are revocable instruments prior to the death of the employee. In response to those comments, these proposed regulations provide that a trust named as beneficiary of an employee's interest in a retirement plan be permitted to be revocable while the employee is alive, provided that it becomes irrevocable, by its terms, upon the death of the employee. The requirements in the Existing Proposed Regulations that the trust be valid under state law (or would be but for the fact that there is no corpus) and that the beneficiaries be identifiable from the trust instrument are retained.

Information to Plan Administrator

In order to permit the plan administrator to substantiate that the requirements for treating the beneficiaries of the trust as designated beneficiaries under the plan are satisfied, the Existing Proposed Regulations require that a copy of the trust instrument be provided to the plan administrator by the earlier of the required beginning date or the date of the employee's death. In response to comments, this proposed regulation permits an alternative method of substantiation.

As under the Existing Proposed Regulations, a copy of the trust instrument may be provided to the plan administrator. However, because the trust need not be irrevocable, under this method, the employee must also agree that if the trust instrument is amended at any time in the future, the employee will, within a reasonable time, provide a copy of each such amendment.

Alternatively, the employee may provide a list of all of the beneficiaries of the trust (including contingent beneficiaries) with a description of the portion to which they are entitled and any conditions on their entitlement, and certify that, to the best of the employee's knowledge, this list is correct and complete and that the other requirements for the beneficiaries of the trust to be treated as designated beneficiaries are satisfied. Under the second method, the employee must also agree to provide corrected certifications to the extent that the amendment changes the information previously certified. Finally, the employee must agree to provide a copy of the trust instrument to the plan administrator upon demand.

In addition, these proposed regulations provide that, if the minimum required distributions after death are determined by treating the beneficiaries of the trust as designated beneficiaries, a final certification as to the beneficiaries of the trust instrument must be provided to the plan administrator by the end of the ninth month after the death of the employee. This rule applies even if a copy of the trust instrument were provided to the plan administrator before the employee's death. Alternatively, an updated trust instrument may be provided.

The proposed regulations also provide that a plan will not fail to satisfy section 401(a)(9) merely because the terms of the actual trust instrument are inconsistent with the information in the certifications or trust instruments previously provided to the plan administrator if the plan administrator reasonably relies on the information provided in the certifications or trust instruments. However, the minimum required distributions for years after the year in which the discrepancy is discovered must be determined based on the actual terms of the trust instrument. For those years, the minimum required distribution will be determined by treating the beneficiaries of the employee as having been changed in the year in which the year the discrepancy was discovered to conform to the corrected information and by applying the change in beneficiary provisions found under the Existing Proposed Regulations. However, for purposes of determining the amount of the excise tax under section 4974 (including application of a waiver, if any, for reasonable error under section 4974), the minimum required distribution is determined for any year based on the actual terms of the trust in effect during the year.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Moreover, it is hereby certified that the regulations in this document will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the reporting burden is primarily on the plan participant to supply the information rather than on the entity maintaining the retirement plan and the fact that the number of participants per plan to whom the burden applies is insignificant. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this

notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) or comments transmitted via Internet that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information: The principal author of these regulations is Cheryl Press, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Previously Proposed Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.401(a)(9)–1 as proposed to be added at 52 FR 28075, July 27, 1987, is amended by:

1. Revising Q&A D–5.
2. Revising Q&A D–6.
3. Adding Q&A D–7.

The additions and revisions read as follows:

§ 1.401(a)(9)–1 Required distributions from trust and plans.

* * * * *

D. Determination of the Designated Beneficiary

* * * * *

D–5. Q. If a trust is named as a beneficiary of an employee, will the beneficiaries of the trust with respect to the trust's interest in the employee's benefit be treated as having been designated as beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9)(A)(ii)?

A. (a) Pursuant to D–2A of this section, only an individual may be a designated beneficiary for purposes of determining the distribution period under section 401(a)(9)(A)(ii). Consequently, a trust itself may not be the designated beneficiary even though the trust is named as a beneficiary. However, if the requirements of paragraph (b) of this D–5A are met, distributions made to the trust will be treated as paid to the beneficiaries of the trust with respect to the trust's interest in the employee's benefit, and the beneficiaries of the trust will be treated as having been designated as beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9)(A)(ii). If, as of any date on or after the employee's required beginning date, a trust is named as a beneficiary of the employee and the requirements in paragraph (b) of this D–5A are not met, the employee will be treated as not having a designated beneficiary under the plan for purposes of section 401(a)(9)(A)(ii). Consequently, for calendar years beginning after that date, distribution must be made over the employee's life (or over the period which would have been the employee's remaining life expectancy determined as if no beneficiary had been designated as of the employee's required beginning date).

(b) The requirements of this paragraph (b) are met if, as of the later of the date on which the trust is named as a beneficiary of the employee, or the employee's required beginning date, and as of all subsequent periods during which the trust is named as a beneficiary, the following requirements are met:

(1) The trust is a valid trust under state law, or would be but for the fact that there is no corpus.

(2) The trust is irrevocable or will, by its terms, become irrevocable upon the death of the employee.

(3) The beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the employee's benefit are identifiable from the trust instrument within the meaning of D–2 of this section.

(4) The documentation described in D–7 of this section has been provided to the plan administrator.

(c) In the case of payments to a trust having more than one beneficiary, see E–5 of this section for the rules for determining the designated beneficiary whose life expectancy will be used to determine the distribution period. If the beneficiary of the trust named as beneficiary is another trust, the beneficiaries of the other trust will be treated as having been designated as beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9)(A)(ii), provided that the requirements of paragraph (b) of this D–5A are satisfied with respect to such other trust in addition to the trust named as beneficiary.

D–6. Q. If a trust is named as a beneficiary of an employee, will the beneficiaries of the trust with respect to the trust's interest in the employee's benefit be treated as designated beneficiaries under the plan with respect to the employee for purposes of determining the distribution period under section 401(a)(9)(B)(iii) and (iv)?

A. (a) If a trust is named as a beneficiary of an employee and the requirements of paragraph (b) of D–5A of this section are satisfied as of the date of the employee's death or, in the case of the documentation described in D–7 of this section, by the end of the ninth month beginning after the employee's date of death, then distributions to the trust for purposes of section 401(a)(9) will be treated as being paid to the appropriate beneficiary of the trust with respect to the trust's interest in the employee's benefit, and all beneficiaries of the trust with respect to the trust's interest in the employee's benefit will be treated as designated beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9)(B)(iii) and (iv). If the beneficiary of the trust named as beneficiary is another trust, the beneficiaries of the other trust will be treated as having been designated as beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9)(B)(iii) and (iv), provided that the requirements of paragraph (b) of D–5A of this section are satisfied with respect to such other trust in addition to the trust named as beneficiary. If a trust is named as a beneficiary of an employee and if the requirements of paragraph (b) of D–5A of this section are not satisfied as of the dates specified in the first sentence of this paragraph, the employee will be treated as not having a designated beneficiary under the plan. Consequently, distribution must be made in accordance with the five-year rule in section 401(a)(9)(B)(ii).

(b) The rules of D–5 of this section and this D–6 also apply for purposes of applying the provisions of section 401(a)(9)(B)(iv)(II) if a trust is named as a beneficiary of the employee's surviving spouse. In the case of

payments to a trust having more than one beneficiary, see E–5 of this section for the rules for determining the designated beneficiary whose life expectancy will be used to determine the distribution period.

D–7. Q. If a trust is named as a beneficiary of an employee, what documentation must be provided to the plan administrator so that the beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the employee's benefit are identifiable to the plan administrator?

A. (a) *Required distributions commencing before death.* In order to satisfy the requirement of paragraph (b)(4) of D–5A of this section for distributions required under section 401(a)(9) to commence before the death of an employee, the employee must comply with either paragraph (a)(1) or (2) of this D–7A:

(1) The employee provides to the plan administrator a copy of the trust instrument and agrees that if the trust instrument is amended at any time in the future, the employee will, within a reasonable time, provide to the plan administrator a copy of each such amendment.

(2) The employee—

(i) Provides to the plan administrator a list of all of the beneficiaries of the trust (including contingent and remainderman beneficiaries with a description of the conditions on their entitlement);

(ii) Certifies that, to the best of the employee's knowledge, this list is correct and complete and that the requirements of paragraphs (b)(1), (2), and (3) of D–5A of this section are satisfied;

(iii) Agrees to provide corrected certifications to the extent that an amendment changes any information previously certified; and

(iv) Agrees to provide a copy of the trust instrument to the plan administrator upon demand.

(b) *Required distributions after death.* In order to satisfy the documentation requirement of this D–7 for required distributions after death, by the end of the ninth month beginning after the death of the employee, the trustee of the trust must either—

(1) Provide the plan administrator with a final list of all of the beneficiaries of the trust (including contingent and remainderman beneficiaries with a description of the conditions on their entitlement) as of the date of death; certify that, to the best of the trustee's knowledge, this list is correct and complete and that the requirements of paragraph (b)(1), (2), and (3) of D–5A of this section are satisfied as of the date of death; and agree to provide a copy of the trust instrument to the plan administrator upon demand; or

(2) Provide the plan administrator with a copy of the actual trust document for the trust that is named as a beneficiary of the employee under the plan as of the employee's date of death.

(c) *Relief for discrepancy between trust instrument and employee certifications or earlier trust instruments.* (1) If required distributions are determined based on the information provided to the plan administrator in certifications or trust instruments described in paragraph (a)(1), (a)(2) or (b) of this D–7A, a plan will not fail to satisfy section 401(a)(9) merely because the actual terms of the trust instrument are inconsistent with the information in those certifications or trust instruments previously provided to the plan administrator, but only if the plan administrator reasonably relied on the information provided and the minimum required distributions for calendar years after the calendar year in which the discrepancy is discovered are determined based on the actual terms of the trust instrument. For purposes of determining whether the plan satisfies section 401(a)(9) for calendar years after the calendar year in which the discrepancy is discovered, if the actual beneficiaries under the trust instrument are different from the beneficiaries previously certified or listed in the trust instrument previously provided to the plan administrator, or the trust instrument specifying the actual beneficiaries does not satisfy the other requirements of paragraph (b) of D–5A of this section, the minimum required distribution will be determined by treating the beneficiaries of the employee as having been changed in the calendar year in which the discrepancy was discovered to conform to the corrected information and by applying the change in beneficiary provisions of E–5 of this section.

(2) For purposes of determining the amount of the excise tax under section 4974, the minimum required distribution is determined for any year based on the actual terms of the trust in effect during the year.

* * * * *

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 97–33393 Filed 12–29–97; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 59

[AD–FRL–5942–1]

National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental proposed rule.

SUMMARY: On April 30, 1996, the EPA proposed volatile organic compound (VOC) emission standards for automobile refinish coatings. In today's document, the EPA is proposing several changes to the rule regarding applicability, test methods, and multi-colored topcoats.

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

ADDRESSES: *Comments.* Comments should be submitted (in duplicate) to: Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–95–18, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Docket. Docket No. A–95–18 is available for public inspection and copying from 8:00 a.m. to 5:30 p.m. Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, Ground Floor, 401 M Street SW, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning this document, contact Mr. Mark Morris at (919) 541–5416, Organic Chemicals Group, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: Ground level-ozone, a major component of ''smog,'' is formed in the atmosphere by reactions of VOC and oxides of nitrogen (NO_X) in the presence of sunlight. Elevated levels of ozone can cause a range of health effects including respiratory symptoms (e.g. cough, chest pain, shortness of breath, wheezing, throat irritation), increased hospital admissions and emergency room visits for respiratory causes (e.g. aggravation of asthma), decreased lung function; inflammation of the lung, and possible long-term damage to the lungs. Groups at increased risk of experiencing acute health effects from ozone include active children, adults who regularly work or exercise outside, and people with pre-

existing respiratory disease. Elevated ozone levels also can cause effects such as agricultural crop loss, damage to forests and ecosystems, and visible injury to foliage of sensitive species.

In the 1990 Amendments to the Clean Air Act (Act), Congress directed EPA to issue standards to reduce emissions from consumer and commercial products because these products, although individually small sources of emissions, together contribute significantly to the ozone pollution problem. In 1990, consumer and commercial products emitted approximately 6 million tons of VOC nationwide, or about 28 percent of all man-made VOC.

Section 183(e) of the Act requires the Administrator to study and report to Congress on emissions of VOC into the ambient air from consumer and commercial products and their potential to contribute to ozone nonattainment levels. In addition, section 183(e) requires the Administrator to list those categories of consumer and commercial products that account for at least 80 percent of the VOC emissions, on a reactivity-adjusted basis, in ozone nonattainment areas and establish priorities for their regulation. The list is to be divided into four groups, with one group regulated every 2 years until all four groups are regulated.

The EPA submitted the Report to Congress on March 15, 1995, and on this same date established the priority list for future regulation of the consumer and commercial products that account for 80 percent of VOC emissions, on a reactivity-adjusted basis, in nonattainment areas (published on March 23, 1995, at 56 FR 15264). Automobile refinish coatings are in the first group of products to be regulated. On April 30, 1996, the EPA proposed volatile organic compound emission standards for automobile refinish coatings.

In today's supplemental notice, the EPA is proposing several changes to the rule regarding applicability, test methods, and multi-colored topcoats. The EPA welcomes comments on these proposed changes.

Applicability

Components of Multiple Manufacturers

Regulated entities under the proposed rule included only manufacturers and importers of complete automobile refinish coatings. The VOC content of an automobile refinish coating depends, however, on the VOC content levels of all components that make up the coating. Coating users sometimes combine components made by multiple manufacturers when preparing a coating. Since components themselves are not coatings, a manufacturer who produces only hardeners, for example, would not be subject to the proposed rule. Such a manufacturer could recommend that its hardener be combined with components of other manufacturers, possibly resulting in a coating that exceeds the VOC content standards of the rule. Such a situation could essentially undermine the impact of the proposed rule. In the preamble to the proposed rule, the EPA stated that the rule may need to apply to all automobile refinish coating component manufacturers and importers to be effective. Commenters on the proposed rule recommended that the EPA expand the applicability of the rule to include all component manufacturers and importers to address the problem of components that may result in noncompliant coatings. No commenter was opposed to expanding the applicability.

At the time of the proposed rule, the EPA had not addressed how to determine compliance with the rule if applicability were expanded to include manufacturers and importers of coating components; therefore, the EPA did not propose a compliance mechanism for the rule for coatings consisting of components of multiple entities. The EPA is proposing in this supplemental notice to include as regulated entities all manufacturers and importers of automobile refinish coating components. The EPA is thus also proposing a mechanism for determining compliance with the rule for coatings consisting of components made or imported by multiple entities.

For the purposes of this proposed rulemaking, an automobile refinish coating is defined to include any combination of coating components recommended for automobile refinishing by the manufacturer or importer of one or more of the coating components. A recommendation for use in automobile refinishing that appears on a product container or in any product literature shall constitute a recommendation for automobile refinishing use.

Determining compliance for coatings consisting of components made or imported by one regulated entity is relatively easy. In general, determining compliance with the proposed rule would consist of ''spot checking,'' where the EPA would obtain coating components, mix the components in the ratios recommended by the regulated entity (on the containers or in any product literature), and analyze the resulting coating using Reference Method 24. The EPA considered requiring regulated entities to perform VOC testing of their coatings on a regular basis (e.g., every nth batch) to demonstrate compliance with the rule, but believes that such a requirement would be economically infeasible. The EPA believes that random spot checks will be adequate to encourage regulated entities to assure that all of their coating batches are compliant; however, the EPA welcomes comments on other ways to demonstrate compliance.

Determining the compliance of coatings that consist of components made or imported by multiple regulated entities is more difficult. The EPA considered several options for determining compliance in these cases. The EPA considered requiring regulated entities (that recommend the use of their components with those of other regulated entities) to use Reference Method 24 to test the coatings resulting from their recommendations. Using this information, the entities would establish the maximum allowable VOC content of their components, and the EPA would spot check components to determine compliance. However, the EPA has no standard method for determining the VOC content of components. Also, the VOC content of a coating is not simply the sum of the VOC contents its components, so component VOC content is not necessarily an indicator of the VOC content of the overall coating. Therefore, the EPA believes it is technically infeasible to determine compliance using component VOC content information.

Because of the technical infeasibility of the approach described above, the EPA has concluded that the responsibility for coatings should be based on product recommendations. In other words, if an entity recommends a combination of components (made or imported by one or more regulated entities), then that entity is responsible for the compliance of the resulting coating. There may be cases where a coating resulting from an entity's recommendation is noncompliant because of the components of other entities. Since this occurrence may be beyond the control of the recommending entity in some circumstances, the EPA considered allowing the entity to provide the EPA with new or existing Reference Method 24 test data demonstrating the compliance of the coating resulting from their recommendation. This option is technically feasible, and is the most appealing since compliance is determined in essentially the same way for all regulated entities. It is this option that the EPA is proposing in today's

notice to address coatings consisting of components of multiple regulated entities.

It is important to note that regulated entities would be liable only for those coatings they recommend. For example, if a regulated entity recommends that three of its coating components be combined and used in automobile refinishing, it is responsible for the coating that results from that combination. If a regulated entity recommends the substitution of one of its components for that of another regulated entity, the former entity is responsible for the resulting coating. A regulated entity is not responsible for coatings resulting from the recommendations of others, even if such recommendations involve the use of components of that regulated entity. The EPA solicits comments on the compliance mechanism proposed in today's notice.

Touch-Up Coatings

Two commenters on the proposed rule recommended exempting touch-up coatings from the rule. The commenters stated that such coatings are sold in small containers, are applied by brush, and are used only for minor scratches or nicks that do not require more extensive repair.

Touch-up coatings differ from typical refinish topcoats in that they are typically used by automobile owners to repair minor scratches or nicks, require no mixing prior to application, and are sold in small containers. Since the EPA has already exempted coatings supplied in nonrefillable aerosol containers from the proposed rule, aerosol touch-up coatings are already exempted under the proposed rule. In this notice, the EPA is proposing to exempt all touch-up coatings because they are a relatively insignificant emissions source. The EPA is proposing the following definition for touch-up coatings, obtained from South Coast Air Quality Management District Rule 1151:

> Touch-up coatings are coatings applied by brush, air-brush, or non-refillable aerosol can to cover minor surface damage and dispensed in containers of no more than eight ounces.

The EPA welcomes comments on the definition and exemption of touch-up coatings proposed in today's document.

Test Methods

One commenter on the proposed rule stated that the EPA had not designated a reliable test method for determining the acid content of pretreatment wash primers. The proposed method, ASTM Test Method D 1613–91, covers the determination of total acidity in organic compound and hydrocarbon mixtures used in paints and other substances. This method consists of a titration using a color indicator to determine the endpoint of the titration. The EPA agrees that since some pretreatment wash primers are pigmented, tests using color indicators may not work. However, the proposed method can be used to determine the acid content of the acid-containing component of the primer.

Pretreatment wash primers typically consist of two components: a ''base'' coating and a catalyst. The base contains the pigment, and the catalyst contains the acid. The catalyst is a mixture of organic compounds that contains acid; therefore, it is in the scope of the proposed method. The EPA is proposing in this notice that the proposed test method be used to determine the acid content of the catalyst, and that calculations involving the acid content of the catalyst and the mixing ratio of the base to the catalyst be performed to determine the overall weight percent of acid in a primer.

In the proposed rule, anti-glare/safety coatings were included in the specialty coating category, and were defined as coatings that do not reflect light. One commenter stated that anti-glare coatings do reflect some light, and that it would be more appropriate to call such coatings ''low gloss coatings'' and specify a gloss value to delineate them from other coatings. The EPA agrees, and is proposing in this notice to replace ''anti-glare/safety coatings'' with ''low-gloss coatings,'' defined as topcoats with specular gloss values of 25 or less with a 60° gloss meter. The EPA is proposing that ASTM Test Method D 523–89 be used for the determination of specular gloss of coatings. This method is used by industry for this purpose. The EPA requests comments on the appropriateness of both of the test methods described above.

Multi-Colored Topcoats

One commenter on the proposed rule suggested the addition of a coating category for multi-colored topcoats, which are wear-resistant and durable coatings used mainly for lining the cargo beds of pickup trucks and other utility vehicles. The commenter stated that the South Coast Air Quality Management District (SCAQMD) Rule 1151 has a separate category and VOC content standard for multi-colored topcoats, and recommended the EPA either include a separate category for these coatings or include them in the definition of specialty coatings.

The EPA did not specifically address multi-colored topcoats in the proposed rule. Since the EPA has no information indicating that such coatings can meet the topcoat standard, and because of their special use as protective coatings, the EPA is proposing in today's notice to include multi-colored topcoats in the specialty coating category. The EPA is proposing in today's notice to define multi-colored topcoats as topcoats which exhibit more than one color, are packaged in a single container, and are applied in a single coat. The EPA solicits comments on this proposed definition of multi-colored topcoats, and the addition of such topcoats to the specialty coatings category.

Administrative Requirements

Paperwork Reduction Act

The Office of Management and Budget (OMB) approved the information collection requirements contained in the April 30, 1996, proposed rule (61 FR 19005) under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.*, and assigned OMB control number 2060–0353. The EPA estimated there were thirty regulated entities under that proposed rule. In today's supplemental proposal, the EPA is proposing to expand applicability; however, this expansion of applicability serves mainly to elucidate which entity is responsible for a given coating. The EPA does not expect a significant increase in the number of regulated entities as a result of today's action because most entities that make or import coatings also make or import coating components. Therefore, the EPA's original estimate of regulated entities accounts for the entities that would be subject as a result of today's supplemental proposal.

Executive Order 12866

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the EPA must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of this Executive Order to prepare a regulatory impact analysis (RIA). The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the

budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the executive order. Today's supplemental proposal is not a ''significant regulatory action'' within the meaning of the executive order.

Executive Order 12875

To reduce the burden of federal regulations on States and small governments, the President issued Executive Order 12875 on October 26, 1993, entitled Enhancing the Intergovernmental Partnership. In particular, this executive order is designed to require agencies to assess the effects of regulations that are not required by statute and that create mandates upon State, local, or tribal governments. This regulation does not create mandates upon State, local, or tribal governments.

Regulatory Flexibility Act

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

The EPA performed an Initial Regulatory Flexibility Analysis (IRFA) to determine the extent of any impacts under the proposed rule. This IRFA was included in the docket for the proposed rule. In this supplemental proposal, the EPA is proposing to expand the class of regulated entities to include all automobile refinish coating component manufacturers and importers. For the purposes of this supplemental proposal, the EPA is now updating the IFRA.

The EPA estimates there are about 20–25 companies producing automobile refinish coating components. At least 10 of these are large companies that have the majority of the industry market share. The EPA believes that the remaining 10–15 companies have fewer than 500 employees and are therefore small entities in accordance with Small Business Administration regulations. Several of the small companies produce only thinners and reducers. The thinners/reducers used in low-VOC coatings are not significantly different from those used in conventional coatings; therefore, the proposed rule will not have a significant impact on manufacturers of thinners/reducers because little, if any, reformulation of these components will be necessary under the proposed rule. Some of the remaining small companies already produce low-VOC coating components because they operate in areas that already have State or local automobile refinish rules in effect. Most State and local rules are at least as stringent as the proposed national rule. The EPA concludes, therefore, that the proposed rule would not have a significant impact on these companies.

The remaining small companies will be impacted by the proposed rule, but the EPA believes that the impact will not be significant. The impacts of the proposed rule are from process modifications, training, and reporting requirements, as discussed in the IRFA. Process modifications are those changes that may be necessary for the production of low-VOC (high-solids) coatings, including the use of different mixing and pumping equipment. Some manufacturers affected by State and local rules have already complied with those rules by changing the recommended mixing ratios of components and have not changed the components themselves in a significant way; therefore, few process modifications have likely been necessary in these cases. Where process modifications are necessary, their impact will not be significant; when such impacts are examined assuming that they will be passed on to the user (as was done in the IFRA), the impacts do not significantly affect the cost of coatings or refinish jobs.

The EPA believes that the impacts from training and reporting requirements will be minimal. Many States have developed automobile refinish rules since the time the impacts analysis for the proposed national rule was performed, and the regulated entities have already taken steps to comply with such regulations. It is likely that most, if not all, regulated entities are already familiar with low-VOC coatings; therefore, the need for training (and, thus, training costs) are likely overstated in the analysis for the proposed rule. Training was estimated to cost less than $500 per individual for the proposed rule. For small entities with few employees needing training, this cost would not be significant. Reporting requirements of the proposed rule consist of an initial report that provides the EPA with basic information about regulated entities (name, location, etc.), and periodic reports (if necessary) to explain any date codes that regulated entities may use to indicate the manufacture date of components. Given the limited nature of the reporting requirements, the EPA believes that the impact of the reporting requirements will not be significant.

The EPA does not have data sufficient to quantify precisely the impact of the proposed rule by measures such as percentage of sales, but the nature of the impacts are such that the impacts will be small. The EPA bases this conclusion upon the information that was reasonably available to Agency, and hereby solicits further relevant information regarding the cost of compliance with the proposed rule.

There are several aspects of the proposed rule which the EPA has instituted to minimize any impacts to small entities. First, the EPA has proposed not to require a regulated entity to perform initial VOC testing of its coating components or any of the coatings that might result from the combination of the entity's components with those of other regulated entities. The EPA believes that such an approach would have required regulated entities to perform numerous tests which, in the aggregate, could have imposed significant costs upon regulated entities. The EPA believes that such a requirement would have had a disproportionate impact upon small entities. Instead, the EPA has proposed to link responsibility for a coating's compliance with the regulated entity's recommendations for use. The EPA will assure compliance by ''spot-checking'' the VOC content of the coatings that result from such recommendations.

Second, the EPA has proposed not to require a regulated entity to perform periodic VOC testing of its coating component batches. The EPA considered requiring regulated entities to periodically test batches of their components to ensure that the VOC content of coatings resulting from the combination of such components would be compliant. As discussed above, compliance with the proposed rule will be determined by the spot-checking of coatings. Regulated entities may rely on formulation data only to assure themselves of their compliance, or they may decide to perform some VOC testing for this purpose, but the EPA is not requiring batch testing. The EPA believes that not requiring batch testing will limit the impact upon regulated entities and, in particular, will help to alleviate impacts upon small entities.

Finally, the EPA has proposed not to require recordkeeping by regulated entities. The EPA considered requiring regulated entities to maintain records containing information on coating component batches but determined that such records would not aid significantly in the enforcement of the standard. As

stated above, the only reporting requirements are an initial report that allows the EPA to determine the universe of regulated entities, and reports that explain date codes if such codes are used to indicate the date of manufacture. The EPA believes that minimization of recordkeeping and reporting requirements will help to decrease impacts upon small entities.

For the foregoing reasons, the EPA anticipates that the proposed rule will not have a significant impact on a substantial number of small entities. The EPA believes that this conclusion is appropriate with respect to all entities to be regulated under the proposed rule, including the component manufacturers and importers encompassed by this supplemental proposal.

Unfunded Mandates Act of 1995

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the 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.

The EPA has determined that today's action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of section 202 of the Unfunded Mandates Act do not apply to this action.

Electronic Submission of Comments

Comments may be submitted electronically by sending electronic mail (e-mail) to: a-and-r-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments will also be accepted on diskette in WordPerfect 5.1 or ASCII file format. All comments in electronic form must be identified by the docket number A–95–18. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

List of Subjects in 40 CFR Part 59

Environmental protection, Air pollution control, Automobile refinish coatings, Consumer and commercial products, Volatile organic compounds.

Dated: December 9, 1997.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 97–33963 Filed 12–29–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[FRL–5941–4]

Total Mercury and Particulate Continuous Emissions Monitoring Systems; Measurement of Low Level Particulate Emissions; Implementation at Hazardous Waste Combustors; Proposed Rule—Notice of Data Availability and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability and request for comments.

SUMMARY: This announcement is a notice of data availability and invitation for comment on the following reports pertaining to total mercury and particulate continuous emissions monitoring systems: DRAFT: Total Mercury CEMS Demonstration, Summary Table, dated December 1997; and DRAFT: Particulate Matter CEMS Demonstration, Volume I (with appendices), dated December 1997. EPA proposed requiring these monitors for hazardous waste combustors in the hazardous waste combustor proposed rule published on April 19, 1996. In addition, this document discusses topics for implementing particulate matter continuous emissions monitoring systems at hazardous waste combustors.

Readers should note that only comments about new information discussed in this document will be considered. Issues related to the April 19, 1996, proposed rule and subsequent documents that are not directly affected by the documents or data referenced in this Notice of Data Availability are not open for further comment.

DATES: Written comments on these documents and this document must be submitted by January 29, 1998.

ADDRESSES: Commenters must send an original and two copies of their comments referencing Docket Number F–97–CS6A–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, D.C. 20460. Comments may also be submitted electronically through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–97–CS6A–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Commenters should not submit electronically any confidential business information (CBI). An original and two copies of the CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, OSW (5305W), 401 M Street, SW, Washington D.C. 20460.

For other information regarding submitting comments electronically, viewing the comments received, and supporting information, please refer to the proposed rule (61 FR 17358 (April 19, 1996)). The RCRA Information Center is located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia and is open for public inspection and copying of supporting information for RCRA rules from 9:00 a.m. to 4:00 p.m. Monday through Friday, except for Federal holidays. The public must make an appointment to view docket materials by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired) including directions on how to access some of the documents and data referred to in this notice electronically. Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Hotline is open Monday-Friday, 9:00 a.m. to 6:00 p.m., Eastern Time.

The documents referred to in this notice are available over the Internet. The documents can be accessed by typing the following universal resource locator (URL):

http://www.epa.gov/epaoswer/hazwaste/combust/cems

This URL provides a home page through which all electronically available documents can be downloaded. The Technology Transfer Network (TTN) also provides a link to this page. CEMS information is available on TTN at the following URL:

http://ttnwww.rtpnc.epa.gov/html/emtic/cem.htm

The home page contains links to the files that are available electronically. The files are in an executable, compressed format to facilitate

downloading. Once extracted, each compressed file may result in more than one decompressed file. The reports are in Adobe Acrobat©, PDF format. The reader should note that figures, diagrams, and appendices may not be available electronically or may only be available in other formats.

For other information regarding the information contained in Sections I, II, IV, and V of this notice, contact Mr. Scott Postma, (5302W), Office of Solid Waste, 401 M Street, SW, Washington, D.C. 20460, phone (703) 308–6120, E-MAIL: postma.scott@epamail.epa.gov. For information regarding Section III of this notice, contact Mr. H. Scott Rauenzahn (5302W), Office of Solid Waste, 401 M Street, SW, Washington, D.C. 20460, phone (703) 308–8477, e-mail: rauenzahn.scott@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On April 19, 1996, EPA proposed revised standards (herein referred to as ''the proposed rule'') for hazardous waste combustors (HWCs, i.e., incinerators and cement and lightweight aggregate kilns that burn hazardous waste). See 61 FR 17358. Comments received from the public in response to the proposed rule are found in RCRA docket F–96–RCSP–FFFFF.

A previous notice of data availability (NODA), published on March 21, 1997, gave the public the opportunity to review the Agency's approach to demonstrating CEMS for HWCs. This previous NODA is herein referred to as ''the first CEMS NODA'' or ''CEMS NODA 1.'' See 62 FR 13776. Comments received from the public in response to the first CEMS NODA are found in RCRA docket F–97–CS3A–FFFFF.

Readers should note that a separate docket was established for this document. See the **ADDRESSES** section above for more information.

Table of Contents

I. Introduction and Background
II. The Hg CEMS Demonstration Tests
III. The PM CEMS Demonstration Tests
A. PM performance Specification (PS) 11 Levels
1. Revised Specification Levels for the Correlation Coefficient, Confidence Interval, and Tolerance Interval
2. Data Availability
3. Data Quality Objectives: New Procedures to Appendix F of 40 CFR Part 60
B. Manual Method Accuracy
1. Modification of the Filter Recovery Process
2. Improved Sample Collection
3. Elimination of Contamination
4. Improved Sample Analysis
5. Comparison of M5 and M5i Method Precision
6. Paired Data
C. Transferability of These Demonstration Test Results to Other HWC Sources
IV. PM CEMS: Implementation and Compliance
A. PM CEMS Compliance Schedule
B. PM CEMS Operating Parameter Limit
1. Introduction
2. Data Excluded from Calculating the PM CEMS Operating Parameter Limit
3. Determining the Normality of the Data
4. Averaging Periods for the PM CEMS Operating Parameter Limit
5. Options for Calculating the PM CEMS Operating Parameter Limit
a. Using rank statistics to calculate the PM CEMS-based operating parameter limit at one, fixed averaging period
b. The traditional standard setting approach
6. Consideration of a Variance Procedure to Project a Higher PM CEMS Operating Parameter Limit
a. HAPs for which PM control is necessary to ensure compliance
b. Projecting a higher PM CEMS operating parameter limit considering the ratio of the standard to the measured level of a HAP
c. Ensuring that the higher projected PM CEMS operating parameter limit does not exceed the MACT PM standard
d. Establishing revised operating parameter limits for the PM control device corresponding to the higher projected PM CEMS operating parameter limit
e. Implementing the variance
7. EPA's PM CEMS Testing to Identify a CEMS-Based Emission Level Achievable by MACT-Controlled Sources
C. RCA Test Frequency
D. Extrapolating PM CEMS Calibration Data
1. Extrapolating Light-Scattering PM CEMS Calibration Data
2. Extrapolation of Beta-gage Calibration Data
E. Need to Calibrate to Twice the Emission Standard
F. Allowing PM CEMS to be Used In-lieu of Method 5 Tests
G. Waivers from the PM CEMS Requirements
1. Waiver of PM and Hg CEMS Requirements for Small On-Site Incinerators
2. PM CEMS Waiver for Sources with Short Life-Spans
3. Other Sources
V. Other Issues Concerning CEMS and Test Methods for HWCs
A. Performance Specifications for Optional CEMS
B. Stack Sampling Test Methods

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

I. Introduction and Background

In the proposed rule, EPA proposed that continuous emissions monitoring systems (CEMS) be used for compliance with the HWC total mercury (Hg) and particulate matter (PM) standards. See 61 FR at 17426 and 17435. To require CEMS for compliance the Agency, among other things, must determine that the CEMS are commercially available and have been demonstrated to meet certain performance specifications. To make these determinations, the Agency tested various Hg and PM CEMS being marketed in the U.S. and Europe. The first CEMS NODA described the approach EPA is using to demonstrate the feasibility of PM and Hg CEMS and requested comment on certain technical issues arising from this program. This testing is now complete. Today the Agency is providing notice of an opportunity to comment on the following documents resulting from these CEMS demonstration test program: DRAFT: Total Mercury CEMS Demonstration, Summary Table, dated December 1997; and DRAFT: Particulate Matter CEMS Demonstration, Volume I (with appendices), dated December 1997.

The remainder of this notice describes important information bearing upon how the reports' results relate to EPA's approach to demonstrating Hg and PM CEMS and how PM CEMS could be used for compliance. Many of these issues were raised by commenters in response to CEMS NODA 1 and the proposed rule. The reader is referred to the referenced documents for specific information regarding the Hg and PM CEMS demonstration test program and the comments cited here.

II. The Hg CEMS Demonstration Tests

EPA seeks comment on the document DRAFT: Total Mercury CEMS Demonstration, Summary Table, dated December 1997, provided in the above referenced docket for this NODA. This table summarizes results from the Hg CEMS demonstration tests EPA conducted.

In summary, the Agency found certain aspects of the testing program revealed substantial problems regarding the measurement of the Hg CEMS accuracy and precision. EPA found it difficult to dynamically spike known amounts of mercury (in the elemental and ionic form) and obtain manual method and Hg CEMS measurements that agree at the test source. As a result, the Agency now believes it has not sufficiently demonstrated the viability of Hg CEMS as a compliance tool at all hazardous waste combustors and should not require their use. Nonetheless, EPA still believes Hg CEMS can and will work at some sources but does not have sufficient confidence that all HWC conditions are conducive to proper operation of the Hg CEMS tested. Facilities should have the choice of using Hg CEMS if desired so long as the

permitting agency approves on a site-specific basis the Hg CEMS and its site-specific performance specifications. See a related issue in section V.A. of this NODA regarding the implementation of optional CEMS.

III. The PM CEMS Demonstration Tests

This section describes the report DRAFT: Particulate Matter CEMS Demonstration, Volume I (with appendices), dated December 1997, contained in the docket identified in the Addresses section, above. EPA issued previous notices asking vendors to participate in this program (see 61 FR 7232, February 27, 1996) and to allow the public to comment on the Agency's approach to demonstrating these monitors (see 62 FR 13775, March 21, 1997). Since this could represent the first time EPA requires PM CEMS for compliance at stationary sources, the technical discussion contained in this section is expected to have general applicability beyond sources that burn hazardous waste. In particular, EPA invites comment from all parties concerning the following documents attached to this notice: Method 5I for the determination of low level particulate emissions; Performance Specification 11 for PM CEMS; and Quality Assurance Requirements for PM CEMS.

A. PM Performance Specification (PS) 11 Levels

In CEMS NODA 1, the Agency stated it intended to loosen the proposed PM CEMS Performance Specification (PS) 11 to reflect what was achievable by the monitors during this demonstration test. The test was designed to be a reasonable worst case investigation of what performance (relative to the proposed PS11) the monitors could achieve. Many comments received in response to CEMS NODA 1 stated that the proposed performance specifications were not sufficiently stringent and opposed loosening the specification levels.

Concurrent with the Agency's invitation in CEMS NODA 1 to comment on our approach to demonstrate PM CEMS, EPA determined that much of the variability in the calibration curves resulted from inaccuracies in performing the manual method, Method 5 (M5). Since the fundamental approach in PS11 involves correlating manual method results to PM CEMS outputs, the PS11 statistical results reflected this variability in the manual method. Consequently, EPA undertook a systematic effort to identify and remove this error from the manual method measurement process. Manual method improvements were developed and observed, and performance specification results for the PM CEMS improved as a result. (See a related discussion in section III.B, below, regarding these improvements to the manual method.)

1. Revised Specification Levels for the Correlation Coefficient, Confidence Interval, and Tolerance Interval

As a result of comments on CEMS NODA 1, EPA decided to accept a slightly modified version of the more stringent International Standards Organization (ISO) specification 10155 for PM CEMS. Four of the five PM CEMS tested during the PM CEMS demonstration tests were able to meet all three performance specifications (i.e., those for the correlation coefficient (r), confidence interval (CI), and Tolerance Interval (TI)) at all three of the emissions levels discussed in the May 2, 1997, NODA as alternatives to the proposed emissions standards (69 mg/dscm for cement kilns, 50 mg/dscm for light-weight aggregate kilns, and 34 mg/dscm for hazardous waste incinerators.) See 62 FR 24212 for a discussion of those alternative emissions standards. One technology, an extractive light-scattering technology, did not meet all the performance specification levels at all of the alternative standards.[1] Since EPA must show that at least one commercially available PM CEMS can meet the proposed performance specification, the fact that 4 of the 5 monitors were able to meet these performance levels under reasonable worst-case test conditions adequately shows that the modified specification levels are achievable. The revised performance specification levels are presented in Table 1, below.

TABLE 1: REVISED PERFORMANCE SPECIFICATIONS FOR PM CEMS

Correlation coefficient	Confidence interval	Tolerance interval
0.90	±10%	±25%

As previously stated, these performance levels are nearly identical to the ISO specification for PM CEMS. The only major difference between these and the ISO specification levels is the correlation coefficient, which is 0.95 in ISO 10155 and 0.90 in the modified PS11. This is acceptable since the correlation coefficient does not directly relate to measurement error while the confidence and tolerance intervals do.[2] The revised PS11 also requires that a minimum of 15 runs be used for the calibration while the ISO specification requires only 9 runs. The ISO specification is also vague regarding the PM concentration ranges required for a calibration. The revised PS11 stipulates three ranges: 0 to 30, 30 to 60, and 60 to 100% of the facility's range of PM emissions.

2. Data Availability

EPA had proposed that PM CEMS be used at all times that hazardous waste is in the unit. See 61 FR at 17441. Commenters to the proposed rule did not view this favorably. They said this proposal is equivalent to a 100% data availability requirement for PM CEMS. Commenters stated that this requirement is not achievable since all mechanical devices fail at some point, often without warning. They said a data availability requirement in the 85, 90, or 95% range would be more acceptable. Commenters suggested that when the PM CEMS were not available, the PM-related operating parameter limits EPA proposed should be used in place of the PM CEMS.

EPA largely agrees with this comment. The PM CEMS demonstration tests show that a 100% data availability requirement is not achievable for all PM CEMS in all instances. The Agency also agrees that when PM CEMS are not operating, it is reasonable to provide for some back-up compliance system in lieu of requiring sources to either stop burning hazardous waste or have a back-up PM CEMS available. The PM APCD operating parameters proposed in the event there is no PM CEMS requirement are a good starting point for identifying such a back-up system. See the discussion later in this section for more information on this issue.

Based on these demonstration tests and the comments received, EPA concludes that a 95% data availability requirement is achievable for most PM CEMS. Therefore, EPA intends that PM CEMS be used 95% of the time for compliance. However, there are useful technologies that cannot meet this 95% data availability requirement. This data availability requirement should be relaxed in certain instances. For instance, beta-gages did not meet the 95% data availability requirement during the PM CEMS tests. EPA believes beta-gages, with their relatively superior

[1] This technology did meet 10 of the 14 specification comparisons.

[2] The correlation coefficient is defined as the ratio S_{xy} divided by the square root of the quantity S_{xx} times S_{yy}. S_{xy} is a measurement of error as x relates to y, while S_{xx} and S_{yy} are a reflection of the range of the data set. As a result, the correlation coefficient is not as useful a tool to evaluate measurement error as the correlation and tolerance intervals. This is particularly true as the correlation coefficient approaches 1.

performance and ability to measure PM emissions at truly wet stacks (*i.e.*, those with entrained water droplets in the stack gas), will be useful at some sources for compliance. Therefore, EPA will consider an 85% data availability requirement for beta-gage technology PM CEMS.[3] The Agency anticipates other case-by-case determinations will be made in the future as more is learned about the performance, benefits, and data availability limitations of other PM CEMS technologies.

Finally, EPA believes that increasing the amount of PM data available will enable sources to improve their understanding and better define the relationship between operating parameters and emission levels. EPA is aware of two relevant examples which are described here. The first one is an ongoing cooperative effort with industry, regulatory agencies, and the local public. This effort is focused on a venturi scrubber-controlled lime kiln at a pulp and paper plant where testing is being conducted to evaluate the feasibility of a predictive emission monitoring system (PEMS). Following preliminary measurements and an experimentally designed test matrix, 595 Method 5 runs were performed over a wide variety of process and scrubber operating conditions, and PM emission levels. A correlation coefficient above 0.9 was obtained in correlating PM emission levels with 54 operating parameters. In comparison, use of PM CEMS represents a powerful tool for accumulating much data at a cost that is far less than performing hundreds of Method 5 runs. As a result, PM CEMS allow for a cost-effective way to implement a PM PEMS model than making hundreds of Method 5 measurements.

The second example directly relates to the first. The Electric Power Research Institute (EPRI) has already produced a means to characterize and correlate PM emissions with operating conditions at coal-fired utility boilers. PM emissions from utility boilers are similar to HWCs in that their emissions are affected by a complexity of variations from a number of fuel and feed characteristics, combustor operations, and electrostatic precipitator (ESP) operations. As in the lime kiln case mentioned above, use of PM CEMS represents a more powerful tool for accumulating and correlating vast amounts of PM emission data with PM-related operating parameters at a cost that is far less than performing a large number of Method 5 runs.

These two examples, therefore, lead EPA to believe that a PM CEMS requirement will allow HWC facilities to better define what PM APCD operating parameter limits correspond to a given PM emissions concentration. As a result, the Agency encourages HWC facilities to use PM CEMS data to better define what operating parameters correspond to compliance with a facility's PM CEMS limit. The site-specific limit is discussed further in section IV.B. of this notice.

3. Data Quality Objectives: New Procedure 2 to Appendix F of 40 CFR Part 60

EPA intends to expand the ISO specification to include certain data quality objectives. For example, PM CEMS routinely and automatically check and correct their raw outputs to compensate for phenomena such as ''fogging'' of the optics and drift of the measurement signal. A large and sudden auto correction is indicative of the need to perform maintenance on the PM CEMS. To address this concern, EPA intends to include certain data quality objectives such as: The (PM CEMS internal) calibration drift not exceed 8% during any drift check; the (PM CEMS internal) calibration drift not exceed more than 4% per day for five consecutive days; and the automated (PM CEMS internal) calibration drift adjustment not exceed 2% for five consecutive days.

These data quality criteria would appear in a new Procedure 2 of Appendix F to 40 CFR part 60. Just as Procedure 1 of Appendix F deals with data quality objectives for gaseous CEMS for other CAA rules (CEMS such as NO_X and SO_X), Procedure 2 would address data quality objectives for PM CEMS. Procedure 2 would also include the following data quality objectives: treatment of ''flagged data;'' PM CEMS automatic zero and calibration span requirements; conduct of the Absolute Calibration Audit and the quality of the standards used for these audits; sample volume audit requirements for extractive systems; relative calibration audit (RCA) requirements; the treatment of audit failures; how manual method paired data outliers (see the CEMS NODA 1, 62 FR at 13780) are handled; definition of ''out-of-control'' situations; and how facilities are to respond to these ''out-of-control'' situations. See Procedure 2 (which appears at the end of this notice) and the draft final PM CEMS Demonstration Test Report for more information regarding these requirements and Procedure 2.

B. Manual Method Accuracy

One outgrowth of these PM CEMS demonstration tests is that EPA has made significant improvements in making Method 5 particulate measurements. As previously mentioned, the calibration process for PM CEMS involves correlating PM CEMS outputs to manual method results. High variability in the manual method results will negatively affect the PS11 calibration statistics. Therefore, one important way to improve PS11 statistics is to improve the way manual method measurements are made. These improvements involve the use of a new Method 5I (M5i) for low level PM emissions. M5i consists of the following improvements: improved sample collection; elimination of possible contamination; and improved sample analysis. Each will be discussed in the following paragraphs. M5i will be instrumental in correlating PM CEMS outputs to manual method results. EPA also expects this new method will be preferred in all cases where low level (*i.e.*, below 45 mg/dscm [~0.02 gr/dscf]) measurements are required. In practice, this means that M5i is expected to become the standard method for most HWCs and many other MACT sources. EPA expects many of the improvements in M5i can and will be implemented whenever Method 5 (collectively, including Method 5, 5A, ..., 5H) is used to make particulate measurements.

M5i is almost identical to the traditional M5. Differences are discussed below. We also present a comparison of the precision of M5i (which fully implements these improvements) and the traditional M5 (which largely does not use these improvements) and discuss the need for and handling of paired M5 data.

1. Modification of the Filter Recovery Process

One way M5i differs from the traditional M5 is through the use of a light-weight and integrated filter and filter assembly that can be tared and weighed together. This improves M5 by eliminating the filter recovery step. The filter recovery step can be a significant source of measurement error at some sources. In some cases as the filter dries, the filter adheres itself to the filter assembly. Recovery of the filter then involves scraping the filter off the filter assembly leaving some of the filter (and sample) on the filter assembly or otherwise losing it to the environment. In other cases, the filter recovery

[3] One of the beta gage PM CEMS experienced a 74% data availability during the PM CEMS demonstration test program. Much of the additional downtime was because no U.S.-based technicians were fully trained to service this instrument during this program and parts and personnel had to be brought to the U.S. Once EPA requires a new technology, such as PM CEMS, the market for that new technology is expected to mature in the US similar to how one exists overseas. As a result, data availability will be better than what was experienced here.

process can lead to the loss of sample to the environment as light-weight particles are lost to the air during handling. It can also lead to contamination of the sample in cases where fugitive dust from the environment lands on the filter during the recovery step. Simplifying the recovery step through the use of a light-weight, integrated filter and assembly addresses these concerns and thereby improves the reliability of making PM measurements.

One consequence of this improvement, though, is that the filter used M5i is smaller than that used in the traditional M5 (47 mm compared to approximately 90 to 100 mm in the traditional M5). This smaller filter can plug at higher emissions levels. For this reason, this aspect of M5i may not be implementable at sources with emissions above 45 mg/dscm (that is, total train catches exceeding 50 mg).

2. Improved Sample Collection

Another important improvement to M5 is to the sample collection process itself. These improvements include: ensuring that the nozzle is 90° to the direction of flow at each traverse location; and using Pesticide Grade (*i.e.*, low residue) acetone for probe rinse. Each is discussed in the following paragraphs. These improvements to the sample collection process may also be implemented over time into other versions of Method 5.

Test crews routinely check the ''level'' of the probe only once during sampling—prior to or at the beginning of the sampling process itself. As the traverse progresses, the probe can become ''unlevel,'' *i.e.*, it is no longer at a right (90°) angle to the direction flow in the stack gas. As the angle of the probe departs from 90°, inconsistent amounts of sample are collected and thereby causes error in M5 measurements. This can be corrected by applying a level to the sample probe and checking the level continuously throughout the traverse. Ensuring that the probe angle is constant and level throughout the traverse eliminates this potential source of measurement error.

Finally, residue contained in the acetone used for the probe rinse is another source of sampling error. Acetone is used for the probe rinse since it is a solvent that evaporates readily at room temperatures and thereby allows rapid weighing of the specimen following sampling. The standard M5 procedures require that acetone residue blank levels be determined and that reagent-grade acetone in glass bottles with no more than 0.001% residue be used for probe rinses. Acetone comes in many grades, including reagent grade, depending on how the purchaser intends to use the acetone. Some grades of acetone contain higher levels of residue. This residue remains after the acetone evaporates and contaminates the probe rinse, making the ''catch'' during the probe rinse greater than what it really is. Acetone blanks above 0.001% are not allowed by M5, so the acetone itself must have a concentration of residue no more than this requirement for the blanks. M5 also requires that the acetone be stored in glass containers because acetone from metal containers generally have a high residue blank level. Test crews routinely use reagent-grade acetone purchased in small, glass containers since large quantity purchases create a fire safety and storage issue. Though ordered with the intent of meeting specifications, acetone suppliers often store bulk, reagent grade acetone in metal containers and transfer this acetone to glass containers only to ship the small quantities sold. This means that the residue concentrations found in reagent grade acetone are often higher than what is allowed by M5. The unallowable amount of residue from high blank levels would have a negative effect on the accuracy and precision of M5 results. This can be avoided by requiring low-residue, Pesticide grade acetone.

3. Elimination of Contamination

In a general sense, eliminating contamination in the filter handling processes will eliminate potential sources of error. Contamination can be avoided by: using a portable desiccator for use in transporting and holding the filters to and on the stack; using glass plugs on the filter assemblies to keep them ''pure'' prior to and after sampling; covering the desiccant with a 0.1 micron screen to eliminate potential external contamination of filter housing during transport; and handling the filter assemblies with powder free latex gloves. As previously discussed, contamination in the M5 process will make measured PM levels appear to be higher than what they truly are. Each of these steps to eliminate contamination of the sample will ensure that fugitive particulate from the environment does not contaminate, thereby inadvertently causing a positive bias to the measured PM levels.

4. Improved Sample Analysis

Finally, improved sample analysis will help eliminate error in the Method 5 measurement process. Specific steps to improve M5 sample analysis include: Elimination of all sources of static charge (such as those on the operator, beakers, liners, and balance); use of light weight Teflon beaker liners for gravimetric analysis of the probe rinse; maintaining the laboratory area at a humidity level of 30% or less; and putting a covered desiccant container in the balance weighing chamber. Each is discussed in the following paragraphs.

High, varying levels of static charge typically produce variations in repeated weighing of susceptible materials such as glass filter holder assemblies and Teflon beakers (probe rinse catches). The need for maintaining a relatively dry atmosphere in the analytical room further exaggerates the negative effect of static charge on the weighing process. To control and minimize the consequences of static charge, EPA found it was necessary to preclude any and all aspects of static electricity. This entailed using: (1) A static-free mat on the floor area under the desiccator and balance; (2) a small charge-neutralizer in the desiccator; (3) another small charge-neutralizer in the weighing chamber of the balance; and (4) a static dissipator aerosol spray to prevent static buildup on the Teflon beakers. EPA found it was not possible to consistently reproduce the same weight results (that is, within 0.5 mg) until all four measures were done.

The particulate, filter assembly, and filter are often hydrophilic in nature, i.e., they tend to adsorb water from the air. The amount of water these materials adsorb depends on the amount of water in the air. The moisture content of air is often quantified in terms of the relative atmospheric humidity, or what percentage the actual water concentration of the air is relative to the saturation concentration. The higher the relative humidity of the air, the more water is adsorbed. The converse is also true. As a result, if the relative humidity in the analysis room is high, the amount of water adsorbed onto the particulate, filter, and assembly becomes variable and it becomes increasingly difficult to obtain a stable measurement. Ensuring that the relative humidity in the analysis room remains at a constant, low level will ensure that the amount of water adsorbed by these materials remains relatively small and constant. EPA found that maintaining the relative humidity of the room to below 30% will control this source of error.[4]

To further control and minimize the adverse affects of humidity on reproducing results in the weighing

[4] As humidity levels decrease, static charge tends to increase. The elimination of static charge, previously discussed, will aid at eliminating this problem.

process, a small covered desiccant container was placed in the balance's weighing chamber. This ensures that the humidity level in the weighing chamber is consistent with the humidity level in the desiccator. The desiccant in the weighing chamber dries fugitive air entering the chamber from the room, preventing the adsorption of room air humidity on the materials being weighed.

5. Comparison of M5 and M5i Method Precision

M5i has been validated against Method 5.[5] It is also important to quantify the improvements to M5 just discussed. This can be done by comparing the precision of both methods at each of the three proposed PM standards: 34, 50, and 69 mg/dscm for hazardous waste burning incinerators, LWAKs, and cement kilns, respectively. Precision at the standards is important since measurements at the standard deal with compliance determinations at facilities. The best estimate of the standard deviation is presented to represent this precision.

For M5i, the results presented are the best estimate of the standard deviation at each of the three proposed emissions standards. These results are calculated directly from the data obtained during the PM CEMS demonstration tests. The *relative standard deviation* (e.g., the best estimate of the standard deviation at an emissions concentration, divided by that emissions concentration) for M5i is in all cases less than 5%.

Historical data from Method 5 was derived from PM concentrations ranging from 80 to 255 mg/dscm. This data indicates that the *relative standard deviation* for M5 is constant at 10%. Therefore, if one were to multiple the emissions standard by 10%, one can derive the best estimate of the standard deviation at the three proposed emissions standards.

Table 2, below, illustrates this comparison and shows that M5i is an improvement to M5.

TABLE 2: COMPARISON OF METHOD 5 AND METHOD 5i STANDARD DEVIATIONS

Proposed PM emissions standard (mg/dscm) at 7% oxygen	Best estimate of the standard deviation (mg/dscm)	
	Method 5	Method 5i
34	3.4	1.67
50	5.0	2.24

[5] Only the filter, extraction, and weighing steps were tested.

TABLE 2: COMPARISON OF METHOD 5 AND METHOD 5i STANDARD DEVIATIONS—Continued

Proposed PM emissions standard (mg/dscm) at 7% oxygen	Best estimate of the standard deviation (mg/dscm)	
	Method 5	Method 5i
69	6.9	2.85

6. Paired Data

Throughout most of the PM CEMS demonstration tests, EPA used two simultaneous Method 5i sampling trains. These two simultaneous trains are called ''paired trains'' and the paired train data are called ''paired data.'' The average of the paired data from the two trains was considered the method result. If the ''paired data'' differed by more than 30% from the method result, EPA eliminated the method result from the calculation of the calibration.

EPA's experience is that, despite the efforts just discussed to control method variability, intangibles which are unknown or unquantifiable can cause variability in M5 (and M5i) measurements. Since it is important that highly accurate M5 measurements be obtained for calibrating PM CEMS, these intangibles must be identified in some way and data affected by these intangibles must be eliminated from the PM CEMS calibration. The fact that two simultaneously run M5 (or M5i) measurements do not agree is ample evidence that something in the sample collection and analysis process was not consistent.

Comments received during the comment period for CEMS NODA 1 stated that this process would not be allowed if a facility were doing a calibration for compliance. To address this concern, EPA has incorporated this outlier procedure in the new Procedure 2 and M5i. Having this procedure in the regulations will allow facilities to exclude this type of erroneous data from their PM CEMS calibrations. Please note that this procedure applies *only* if paired data are obtained. Single measurements obtained at different times *are not* paired data. Single runs *cannot* be eliminated by comparing these results to other single measurements.

EPA strongly encourages facilities to use paired data during their calibrations. Beyond the ability to eliminate paired data outliers from the PM CEMS calibration, using the average of two runs as the method result has a moderating affect on the calibration statistics EPA calculated and used to base the PS11 revised in today's notice. This moderating effect improves the PS11 criteria relative to what they would be if paired data were not used. Some facilities may find it difficult to obtain a suitable calibration using only single M5 measurements. However, while we encourage using paired data, we are not requiring paired data for PM CEMS calibrations. This choice can be left to the facilities to determine what makes the most economic and technical sense at their site.

C. Transferability of These Demonstration Test Results to Other HWC Sources

EPA believes this demonstration test program adequately shows that PM CEMS will meet PS11 at most hazardous waste incinerators, cement kilns, and light-weight aggregate kilns. These tests were conducted at a *reasonable worst-case facility* for performance relative to the proposed performance specifications[6]. Therefore, a PM CEMS should pass the performance measures described in the revised draft PS11 at most HWC sources. The paragraphs below discuss specific aspects of PM CEMS and their applicability to each HWC source category.

For cement kilns, in-situ light scattering PM CEMS are operationally very similar to continuous opacity monitors (COMs), a technology employed at these sources for many years. Light-scattering PM CEMS differ from COMs only in the way they obtain and interpret the light from the source. As shown in the LaFarge tests,[7] though, an informed decision is required to determine what type of in-situ light-scattering PM CEMS is best suited for these sources. One PM CEMS used at LaFarge was built with a heated air purge system to blow cement kiln dust away from and out of the optics of the monitor while the other was not. The monitor with the heated air purge performed very well over the course of the tests, though improvements to the Method 5 measurements and a routine cleaning of the optics could have improved performance. The PM CEMS without the heated air purge suffered operational difficulty. In addition, PM from cement kilns is mostly process dust (*i.e.*, raw material). As such, its physical properties are not significantly affected by changes in waste or fuel feeds. Accordingly, in-situ light-scattering PM CEMS will pass performance specifications at cement kilns if an informed decision is made to

[6] For more on EPA's rationale that this is a reasonable worst-case test, see CEMS NODA 1 and the PM CEMS Demonstration Test report sited here.

[7] See section 2.6.7 of the PM CEMS Demonstration Test Report.

purchase a monitor that is designed to address the dusty environment at these facilities.

EPA believes that LWAKs are very similar to cement kilns relative to the applicability of PM CEMS, and therefore the conclusions drawn in the preceding paragraph also apply to LWAKs.

For incinerators, there are certain unique situations which must be discussed: incinerators with truly wet stacks; incinerators with waste heat boilers; and mobile incinerators.

As was the case with cement kilns, HWC incinerators with truly wet stacks (*i.e.*, those with entrained water droplets in the stack gas) need to make an informed choice regarding what PM CEMS technology they elect to use. In-situ light-scattering PM CEMS are likely to have operational difficulty since the water droplets entrained in the stack gas will be mistaken for particulate. This is a readily accepted source of error and means that in-situ light-scattering PM CEMS are not a practical choice for these sources. Beta-gage and certain other light-scattering PM CEMS, however, are designed with extractive reheat systems which heat up the extracted gas to above the water condensation temperature. Incinerator groups are currently working to test these types of systems to gain first-hand experience and data regarding the use of PM CEMS at facilities with truly wet stacks. EPA encourages these tests since they will result in valuable data which can be communicated to personnel at incinerators with truly wet stacks to assist their PM CEMS purchasing decisions.

Incinerators equipped with waste heat boilers (WHBs) downstream of the combustion chamber(s) also require special consideration. Like boilers, these incinerators blow soot periodically to clean the boiler tubes. PM emissions will increase and the physical properties (pertinent to PS11) of the PM may change during periods of soot blowing. To help address the impact of soot-blowing, sources would be required to include soot-blowing episodes during a minimum of three calibration runs. This will ensure that calibration captures the higher emissions that can occur during soot-blowing, thus minimizing the need to extrapolate the calibration curve beyond measured values. In addition, including soot-blowing during calibration runs will enable the source to determine whether any change in the physical properties of the PM during soot-blowing has adversely affected the calibration (*i.e.*, as evidenced by an inability to meet PS 11 when the soot-blowing runs are included).

EPA requests comment on this approach to address the special problems that soot-blowing may cause. In particular, EPA seeks the following information:

—How many incinerators are currently equipped with WHBs? Are sources likely to remove WHBs to facilitate compliance with the MACT standards (*e.g.*, D/F)?

—The normal frequency and duration of soot-blowing. Under what conditions does the frequency and duration of soot-blowing change? How often does this change(s) occur?

—How do PM emissions for runs that include episodes of soot blowing compare to runs without soot blowing?

—How does the effect of the APCS, waste and fuel types, and other relevant factors impact changes to the PM concentrations and physical properties when one compares PM during soot-blowing and PM at other times.

The reader should note that EPA intends to promulgate MACT standards for hazardous waste boilers as part of Phase II of the HWC rulemaking. EPA intends to address the applicability of PM CEMS to boilers then. If because of unforeseen reasons EPA provides a PM CEMS waiver for incinerators with WHBs, EPA would readdress the applicability of PM CEMS to hazardous waste incinerators with waste heat boilers in Phase II.

Finally, another class of hazardous waste incinerators are used at Superfund sites during the clean-up process. These mobile incinerators have small, limited waste processing capacity and are often trucked to the site as needed. EPA is concerned that the variability of the feed to mobile incinerators is beyond what was experienced at the DuPont facility. As such, a unique calibration might be required for every clean-up site, which is unnecessarily burdensome. Given the PM CEMS implementation schedule discussed in section IV.A., below, implementing PM CEMS at these incinerators may not be feasible, and EPA is considering whether to waive the PM CEMS requirement for Superfund mobile incinerators.

If the PM CEMS requirement is waived for certain facilities, the other, traditional operating parameters discussed in this NODA would be used instead to document compliance.

IV. PM CEMS: Implementation and Compliance [8]

A. PM CEMS Compliance Schedule

Many comments received in response to the proposed rule stated that facility personnel are not familiar with the operation and maintenance characteristics of PM CEMS, or how to control their operating conditions to ensure compliance using PM CEMS. For this and reasons explained in section IV.B., EPA plans to allow a 12-month phase-in period before PM CEMS would be used as a compliance parameter. This section describes this compliance schedule.

Prior to the date PM CEMS would be used for compliance (*i.e.*, during the 12-month phase-in period), limits on key PM-related and other key operating parameters (e.g., metals feedrate) would be used to ensure compliance with the MACT standards for PM, SVM, and LVM. This one year phase-in period has four key milestones: The Compliance Date; the performance Test Date; the Certification of Compliance (CoC) date; and the Certification of PM CEMS performance date. By the Compliance Date,[9] facilities would determine, using engineering judgment, the operating parameter limits necessary to ensure compliance with the standards. These initial operating parameter limits would be specified in a Precertification of Compliance (Pre-CoC) that would be submitted to the permitting authority by the Compliance Date. By the Test Date, which is nominally no later than six months after the Compliance Date, facilities would have to conduct a performance test to document compliance with the MACT emissions standards and identify operating parameter limits based on levels achieved during the test. Results of the performance tests and these revised operating parameter limits would be submitted to the permitting authority in a Certification of Compliance (CoC) nominally no more than nine months after the Compliance Date. The operating parameter limits in the CoC would be used as surrogate compliance measures to ensure that the efficiency of

[8] The reader should note that HWCs are currently regulated under RCRA. Sources with a different regulatory history are likely to have a different compliance regime than the one described here. One should not assume that the compliance and implementation scheme described here will necessarily be applied to sources with a different regulatory history.

[9] The Clean Air Act states that the Compliance Date can be no more than three years after the effective date of the rule (i.e., date of publication in the **Federal Register**), unless a source obtains an (up to) one-year time extension of the Compliance Date.

the PM control device was maintained at performance test levels until the one-year anniversary date of the Compliance Date. Beginning at that time, facilities would start using the PM CEMS and cease using the operating parameters as their primary operating parameter for PM control.

During this phase-in year, there are important PM CEMS-related activities being performed. For instance, the PM CEMS, like all other equipment necessary for compliance with the MACT standards, must be installed by the Compliance Date. Like all other tests for the rule, the PM CEMS calibrations and initial certifications (see section 8.3 of PS11 and section 4 of Procedure 2) must also be performed by the Test Date.

As discussed in the PM CEMS Demonstration Test Report, the mathematical characteristics of a light-scattering PM CEMS calibration curve can be difficult to determine. For this reason, a second calibration would be required within 9 months of the Compliance Date if a light-scattering PM CEMS is used. After this second calibration is performed the source would compare the two calibrations separately to determine which mathematical model best represents the data. This information (*i.e.*, the analysis of which mathematical model is best suited for the calibration at this source and the calibration comprised of all valid calibration data obtained) would be included in a Certification of PM CEMS Performance (CoP) submitted within 12 months after the Compliance Date. (A CoP for beta-gage CEMS would also be submitted at this time, but would certify performance based on a single calibration.)

This CoP would also include (for all types of CEMS) the analysis of CEMS data to identify an achievable CEMS-based PM operating parameter limit. See section IV.B., below, for more information regarding the PM CEMS operating parameter limit. On the one-year anniversary of the Compliance Date, facilities would also cease using the PM control device operating parameter limits (such as pressure drop across a fabric filter or total power input to an ESP) and start using the PM CEMS operating parameter limit as their primary compliance parameter for the PM control device.

A source using a light-scattering PM CEMS would be required to perform a third calibration of the PM CEMS within 12 months of the Compliance Date. The third calibration would verify that the mathematical model selected by comparing the first two calibrations is correct. If not, to the approach must be modified based on the new data. If the model needed to be revised, the source would be required to recalculate the PM CEMS operating parameter limit considering the 12 months of data following the Compliance Date. If the model did not need to be revised, the source could elect to recalculate the PM CEMS operating parameter limit considering the full 12 months of CEMS recordings. (We request comment on whether all sources required to perform a third calibration should be required to recalculate the PM CEMS operating limit even if the calibration curve model did not need to be revised.) The results of the third calibration,[10] reassessment of the calibration model, and recalculation of the PM CEMS operating parameter limit would be submitted in a second CoP. This second CoP would be provided to the permitting authority within 15 months of the Compliance Date. Note that this second CoP would not be required if a source uses a beta-gage type PM CEMS that needs only one calibration. A source using a PM CEMS that requires only one calibration (*i.e.*, a beta-gage) would have the option, however, of submitting a second CoP if it wants to update the PM CEMS operating parameter limit based on a full year of data.

Table 3 summarizes how PM CEMS would be implemented for compliance. Following this implementation schedule, facilities would be required to document compliance with the MACT PM standard during periodic performance testing. As discussed in section IV.F. below, a source would have the option of using the PM CEMS or the manual method for this determination. In addition, sources would be required to recalculate their PM CEMS operating parameter limit based on the previous year of CEMS data recorded when the source operated within the operating parameter limits established during the new performance test. This recalculation of the PM CEMS operating parameter limit is necessary since the new performance test is likely to result in numerically different PM-related APCD operating parameters than resulted from the previous test.[11] Facilities would submit the revised operating parameter limits, including the revised PM CEMS operating parameter limit, in a CoC describing the results of the new performance test.

[10] This would involve the verification that the mathematical model used for the calibration is correct, a recalculation of the ''master'' calibration comprised of all three calibration curves, and a revised site-specific PM CEMS operating parameter limit (this time, using the first 12 months of data).

[11] If the PM concentration and operating parameter limits resulting from the subsequent performance test are more stringent than those from the previous test, the facility would have the option of not recalculating their PM CEMS operating parameter limit and continue to operate under the older, more stringent limit.

TABLE 3: PM CEMS COMPLIANCE SCHEDULE

By this date	These PM CEMS activities would be performed
Compliance date	PM CEMS installed
	Precertification of Compliance (Pre-CoC) submitted that establishes PM APCD (and other) operating parameter limits to ensure compliance with the SVM and LVM (and possibly D/F) standards based on engineering judgment.
CD + 6 months (the "Test Date")	PM CEMS calibration tests performed during MACT performance test.
	Method 5i used to demonstrate compliance with the manual method-based PM standard.
CD + 9 months	Certification of Compliance (CoC) submitted that establishes PM APCD (and other) operating parameter limits to ensure compliance with the SVM and LVM (and possibly D/F) standards based on what levels were determined to correspond to compliance with the standard during the Performance Test. (These limits supersede those identified in the Pre-CoC.)
	A second calibration of light-scattering PM CEMS is performed.
CD + 12 months	Source identifies calibration curve, calculates the PM CEMS operating parameter limit (through 9 months), recommends alternative PM control device operating parameters and their numerical limits, and submits a Certification of PM CEMS Performance (CoP).
	Source ceases using PM control device operating parameters as the primary mode of compliance for PM and starts using the PM CEMS. The operating parameters defined in the CoC are used for compliance only when the PM CEMS is unavailable.
	Source reports initial calibration (composite of all calibrations through 9 months), PM CEMS-based limit, and revised operating parameter limits (for use during CEMS malfunctions) to permitting authority.
	A third calibration of light-scattering PM CEMS is performed.
CD + 15 months	Sources using light-scattering PM CEMS revise the calibration curve if necessary based on the third calibration, recalculate the PM CEMS operating parameter limit (through 12-months), update the PM control device operating parameter limits for use during CEMS malfunctions, and submit a second CoP documenting this information.
	The source starts using the revised operating parameters reported in the CoP during periods when the PM CEMS is unavailable unless those alternatives have been disapproved by the permitting authority.

B. PM CEMS Operating Parameter Limit

EPA proposed using site-specific limits on key operating parameters of the PM control device (*e.g.*, pressure drop across a fabric filter) to ensure that the device maintained its collection efficiency at performance test levels. These limits, in combination with other operating parameter limits (e.g., metals feedrate controls) would ensure compliance with the semivolatile metal (SVM) and low volatile metal (LVM) MACT standards. See 61 FR 17376 and 17430 (April 19, 1996). These operating parameter limits on the PM control device would also ensure compliance with the MACT PM standard [12], and possibly the MACT dioxin and furan (D/F) and mercury (Hg) standards if the source uses activated carbon injection to control these HAPs. [13] The availability of PM CEMS allows the Agency to improve upon this approach through the use of PM CEMS as the sole PM control device operating parameter [14]. PM CEMS are a more sensitive and accurate operating parameter than the conventional PM-related operating parameters now used.

This section describes how PM CEMS would be implemented as an operating parameter for the SVM, LVM, PM, and possibly D/F and Hg standards. The reader should note that the proposed MACT standard for PM is and will continue to be a manual methods-based standard. The reader is referred to section IV.F., below, for options a facility could choose to use PM CEMS as a direct indicator of compliance with the MACT PM standard.

1. Introduction

The PM CEMS operating parameter limit would be determined using the PM CEMS data obtained during normal operations from the Compliance Date to the time when the calculation of the operating parameter limit is performed. Although the PM CEMS would be used as an operating parameter limit here, an approach to establishing this limit could be very similar to how EPA establishes national standards from CEMS data. The municipal waste combustor rule published on February 11, 1991, has an example of how this is done [15].

EPA notes that even though the PM CEMS operating parameter limit and the manual methods-based PM standard are both in units of particulate concentration, it is likely that the PM CEMS operating parameter limits will have a different numerical value than the manual methods-based MACT PM standards. This is because the MACT PM standards would be based on manual methods testing with no fixed averaging period. PM CEMS operating parameter limits would have both a fixed averaging period and a calculated

[12] The Agency has proposed a MACT PM standard as a surrogate to control emissions of non-enumerated metals HAPs (*i.e.*, metal HAPs other than those for which specific standards have been proposed—Hg, SVM, and LVM). Those non-enumerated HAPs are Sb, Co, Mn, Ni, and Se.

[13] The Agency proposed that the site-specific PM limit be a compliance parameter for the D/F standard irrespective of whether activated carbon injection was used as a control device. This requirement was grounded upon EPA's initial view that a significant amount of D/F (and other heavy organic compounds) are adsorbed onto particulate. As a result, PM needed to be controlled to ensure continuous compliance with the D/F standard. The Agency is now considering comments that significant D/F may not be adsorbed onto PM. Cement and lightweight kiln PM, in particular, is generally process dust (*i.e.*, processed raw material). This process dust has little affinity for adsorbing D/F. However, EPA's ultimate decision on whether to limit PM on a site-specific basic does not depend on whether there is a need to control PM at all HWCs for D/F control. A site-specific PM limit is still needed to ensure compliance with the SVM and LVM standards at all HWCs. Sources that use activated carbon injection, howver, would be expected to have a significant amount of D/F on the PM.

[14] Note that the MACT standard for PM would continue to be a manual methods-based standard. See subsection IV.F., below, for options facilities could have to use PM CEMS for direct compliance with this PM standard.

[15] The methods used for establishing CEMS standards in the February 1991 MWC rule are described in Appendices A and B of EPA document number EPA–450/3–91–004, dated December 1990. This document can also be found in the Air Docket, located in the Mall area of EPA Headquarters, 401 M Street, SW, Washington, DC 20460. It is part of docket number A–89–08–V–B–3.

numerical limit. As discussed in section 4, below, the numerical value of a limit or standard is a function of the averaging period. Since it is likely that the PM MACT standard and the PM CEMS operating parameter would have different averaging periods, one would expect the numerical value of the PM CEMS operating parameter limit that indicates compliance with the MACT standards would differ from the numerical value of the MACT PM standard.

2. Data Excluded From Calculating the PM CEMS Operating Parameter Limit

Before calculating the PM CEMS operating parameter limit, the PM CEMS data set must be screened to remove PM CEMS data recorded when the PM CEMS was not available or the source was out of compliance with the operating parameter limits established during the CoC.

First, the facility must remove from the data set all PM CEMS data accumulated while the PM CEMS was not available or not performing acceptably as defined by the regulations. Examples of the data not included in the calculation of the PM CEMS operating parameter limit include data obtained when the PM CEMS was ''out-of-control'' as defined in Procedure 2 and PS11, periods when the PM CEMS was not analyzing stack gas (as would happen during calibrations, maintenance, etc.), and periods when the facility was not in operation.

Next, the facility would further screen the data to exclude times when the facility was not operated in accordance with the operating parameter limits resulting from the performance test and reported in the CoC [16]. Note that the CoC operating parameter limits would supersede the Pre-CoC operating parameter limits for this screening purpose. Although the Pre-CoC operating parameter limits may be less stringent than the CoC limits and were valid limits prior to submitting the CoC, the CoC limits are based on performance testing and as such show what operating parameter levels reflect compliance with the standards. The facility must also remove any data collected during periods of PM APCS upset irrespective of whether the operating parameter limits were exceeded. [17]

3. Determining the Normality of the Data

To calculate the PM CEMS operating parameter limit, the CEMS recordings [18] must be averaged over an appropriate averaging period. (See the discussion in the following section.) Accordingly, sources would be required to identify the mathematical model that best fits the screened CEMS data for purposes of averaging the data. For example, a log- or exponential fit may better represent a ''normal'' fit relative to an arithmetic model. To identify which mathematical model represents the best fit, facilities would calculate the Shapiro-Wilk Normality test statistic (W) at the 95% confidence level using the data obtained from the PM CEMS [19]. The mathematical model with a Shapiro-Wilk test statistic closest to one (1) would be the model used for averaging at the facility. This mathematical model would be used for all PM CEMS emissions averaging at the facility.

4. Averaging Periods for the PM CEMS Operating Parameter Limit

Fundamental to any emissions control parameter is the way averaging affects an emissions standard or limit. At a fixed numerical value, a standard or limit is more stringent as the averaging period decreases and less stringent as the averaging period increases because of emissions variability. In the proposed rule, EPA said that an appropriate averaging period for PM CEMS would be the length of time it takes to make three Method 5 runs. The Agency still believes this is an appropriate point of departure for the averaging period for the PM CEMS operating parameter limit.

We proposed a 2 hour averaging period for PM CEMS, reasoning that it would take 40 minutes to accumulate enough PM sample to meet Method 5 requirements for sample ''catch.'' See 61 FR at 17379. Commenters argued, however, that although it takes 40 minutes to accumulate enough sample, test crews routinely sample for one hour. In addition, comments received in response to CEMS NODA 1 said the sampling time for a Method 5 run can vary from 1 to 8 hours. Basing the averaging period for the PM CEMS operating parameter limit on the length of time it takes to perform three Method 5 runs would result in an averaging period in the range of 3 to 24 hours [20]. This is still being evaluated.

5. Options for Calculating the PM CEMS Operating Parameter Limit

As discussed above, the stringency of the standard is a function of two variables—its numerical limit and the averaging period. Equally stringent standards would have a higher numerical limit at shorter averaging period and a lower numerical limit at a longer averaging period. Thus, to calculate the PM CEMS operating parameter limit, one of these two variables must be held constant—either the numerical limit or the averaging period. This section discusses two options for calculating an achievable PM CEMS operating parameter limit by defining the averaging period. EPA investigated ways to define the numerical limit and allow facilities to calculate the averaging period associated with that numerical limit, but found these alternatives often resulted in trial-and-error type calculations and might result in all facilities having different limits and averaging periods. We believe these alternatives are too labor intensive and confusing—both for facilities and the enforcement authority—and rejected this approach. Based on comments and further analysis, the Agency will prescribe one methodology in the final rule.

a. Using Rank Statistics to Calculate the PM CEMS-based Operating Parameter Limit at One, Fixed Averaging Period. Under this approach, the Agency would establish an averaging period common to all sources and each source would calculate its PM CEMS operating parameter limit using rank statistics. (As discussed above, EPA is considering selecting an averaging period from within the range of three to 24 hours.) The averaging period would be the same for all facilities but the numerical value of the PM CEMS operating parameter limit would differ from facility-to-facility based on the historical data obtained at each facility.

[16] For simplicity, EPA proposes to exclude data from all periods in which the facility operated outside of the operating envelope defined in the CoC irrespective of whether the parameter in question affects PM control. Defining what operating parameters are or are not related to PM control would force another layer of complexity in this step.

[17] Episodes of high PM emissions caused by periodic, routine maintenance cycles (e.g., ESP rapping; soot-blowing for waste heat boiler equipped incinerators, etc.) would not be considered upset conditions. We request information on how to objectively distinguish between high PM emissions attributable to PM control device upset conditions versus normal emissions variability.

[18] The light-scattering CEMS provide instantaneous data, recorded every minute as one-minute block averages. Beta-gage CEMS have sampling periods longer than 1 minute.

[19] Note that batch CEMS, such as beta-gages, may have sampling periods longer than 1 minute. In this case, the test statistic would be performed using the batch results.

[20] Three to 24 hours is within the range of CEMS averaging periods EPA typically promulgates. From a broader perspective, averaging periods vary from regulation to regulation depending on the analysis of issues pertaining to the technical, policy, and regulatory history of each particular situation. Therefore, other source categories may or may not have the same averaging period as the one established for PM CEMS at HWC, depending on the outcome of this analysis of issues.

Using the rank statistics option to calculate the limit would involve the following steps. First, the facility would take the screened PM CEMS data (*i.e.*, after non-compliance data has been removed) and calculate rolling averages sequentially from the Compliance Date[21] using the best-fit mathematical model and the averaging period EPA promulgates. The facility would then take the resulting rolling averages and sort them in order from lowest to highest. The facility's PM CEMS operating parameter limit would be the 95th percentile highest PM CEMS rolling average, by rank, experienced during the period the PM CEMS data was accumulated. The 95th percentile is proposed here because it is the percentile level EPA historically uses for these types of calculations. EPA could promulgate some other percentile level, the 90th or 99th for example, if another percentile level is achievable and better represents good PM control.

This rank statistics option is easier to implement, relative to the other options. It also would result in a PM CEMS operating parameter limit that is in the range of actual emissions experienced by the facility (i.e., as opposed to statistically projected emissions) and demonstrated by the facility to be achievable over time. Since the limit for all sources would be based on an averaging period that would be fixed in the rulemaking, the limit would be easier to enforce as well.

b. The Traditional Standard Setting Approach. Another approach the Agency is considering to determine the PM CEMS operating parameter limit is to use the way EPA has established CEMS-based standards in the past. This approach involves calculating the average and standard deviation of the data set and projecting an emissions level associated with the data. As discussed in the MWC rule, EPA calculated ''continuous compliance levels'' for each source using the equation, below.

where: $y=\tilde{x}+K*5$

y = the continuous compliance level;

''x-bar'' = the sample average

k = a constant associated with the averaging period and one exceedance per year; and

s = the sample standard deviation.

This option has some benefits and weaknesses. As discussed, it reflects a procedure EPA has previously used to establish CEMS-based standards. It would also result in every facility having the same averaging period and thus making it easier to track and enforce. However, more complicated statistics are involved. EPA also compares emissions from more than one facility when it uses this approach to set standards and would be unable to oversee the application of this approach on a site-specific basis. As a result, this approach may be unworkable as a way to establish a PM CEMS operating parameter limit.

6. Consideration of a Variance Procedure to Project a Higher PM CEMS Operating Parameter Limit

As discussed previously in today's notice, the PM CEMS operating parameter limit would be based on CEMS recordings during the nine months after the Compliance Date during those periods of time that the source was operating within the operating parameter limits established during the performance test (*i.e.*, the operating parameter limits established in the Certification of Compliance (CoC)). Comments received in response to the proposed rule questioned the need to establish PM-related operating parameters based on the performance test if: (1) PM emissions measured using manual methods during the performance test were well below the PM MACT standard; and (2) emissions of HAPs (*i.e.*, SVM, LVM, and possibly Hg, and D/F) for which PM would be used as an operating parameter limit were well below their MACT standards. Commenters were concerned that, although their sources may readily achieve the MACT PM standard, it may be difficult[22] or expensive to ensure that performance test PM levels are representative of the full range of levels achieved during operations. The same situation could occur with the PM CEMS operating parameter limit just discussed. Infrequent exceedances of the PM CEMS operating parameter limit might or might not be an indication that the SVM, LVM, Hg, D/F, or PM MACT emission standards have been exceeded. Accordingly, commenters recommended that the rule allow sources to project higher PM-related operating parameters based on how much performance test emissions for these HAPs were below their MACT standards.

EPA agrees in theory that establishing the PM CEMS operating parameter limit considering performance test operations (i.e., historical CEMS data when the source operated within the CoC operating parameter limits) could result in an overly conservative operating parameter for PM control at sources with low PM and low HAPs that require PM control to ensure compliance. To address the concerns expressed in the comments received on the proposed rule, the Agency is considering a variance procedure to establish an higher projected PM CEMS operating parameter limit.

The variance procedure would allow facilities with very low concentrations of PM and HAPs requiring PM control for compliance to increase their PM CEMS operating parameter limit (derived from operations within the CoC operating parameter limits). The factor used to increase the PM CEMS operating parameter limit could be defined as the ratio of the MACT standards for which PM control is required to assure compliance, to the performance test levels of those HAPs. To ensure that the source is still be in compliance with the MACT PM standard, the same ratio would be calculated for the PM standard to the unadjusted PM CEMS operating parameter limit. This approach is based on the principle that, at a facility which has experienced no changes in facility operations, the ratio of emissions of HAPs which require PM control to ensure compliance to the PM concentration in the stack is either constant or decreases as PM increases. In addition, revised (*i.e.*, less stringent) traditional operating parameter limits for the PM control devices corresponding to the higher projected PM CEMS operating parameter limit could be established based on historical operating data at levels near the higher projected PM CEMS operating parameter limit.

For illustration, an example follows. Assume that a hazardous waste incinerator has low metals in the feed and uses a HEPA filter for PM control. Further assume that: This incinerator's measured metals emissions during the performance test were 10 μg/dscm and 7 μg/dscm for SVM and LVM, respectively; that the PM concentration measured during the performance test was 5 μg/dscm; for simplicity that PM control is not required to assure compliance with the D/F and Hg standards; the unadjusted PM CEMS operating parameter limit is 15 mg/dscm; and from the HWC NODA published on May 2, 1997, that the promulgated standards are 100 μg/dscm, 55 μg/dscm, and 34 mg/dscm for SVM, LVM, and PM, respectively. The ratio of the standard to the measured levels are 10 and 7.8 for SVM and LVM. For PM,

[21] For simplicity, we believe it is best for facilities to ignore periods when the CEMS recorded data which was screened out and calculate the rolling averages as if the remaining data occurred sequentially. EPA specifically requests comment on this approach.

[22] For example, some PM control devices are so over-designed that it is difficult to force them to operate at elevated PM levels for the duration of a performance test.

the ratio is 6.8. The unadjusted PM CEMS operating parameter limit would be increased by a factor of 6.8 since the ratio calculated for PM has the lowest numerical value.

a. HAPs for which PM control is necessary to ensure compliance. PM would be used as an operating parameter limit for semivolatile metals (SVM), low volatility metals (LVM), and if activated carbon is used, dioxin and furan (D/F) and mercury (Hg). See 61 FR 17422 and 17430 (April 19, 1996). Although the Agency is reconsidering whether PM is an appropriate operating parameter to ensure compliance with the D/F standard in some cases,[23] PM would be an appropriate operating parameter if activated carbon injection were used to control D/F or mercury. This is because D/F and mercury adsorb onto the activated carbon, and as PM emissions increase, emissions of activated carbon with adsorbed D/F and mercury increase.

b. Projecting a higher PM CEMS operating parameter limit considering the ratio of the standard to the measured level of a HAP. The variance would be based on the principle that, as PM emissions increase, the ratio of emissions of each HAP for which PM is an operating parameter limit (*i.e.*, SVM, LVM, and possibly D/F and Hg) to PM emissions either is constant or decreases. Thus, the PM CEMS operating parameter limit derived from operations within the CoC operating parameter limits could be increased without exceeding the MACT standards for those HAPs by a factor considering the ratio of the standard for each of those HAPs to the performance test level of each HAP.

LVM are generally not volatilized in the combustion chamber and thus are evenly distributed over all sizes of particulates. Thus, as PM emissions increase, the ratio of LVM emissions to PM emissions will be constant.

SVM are generally volatilized during combustion and condense preferentially on small particulates prior to (or in) the PM control device. Thus for many PM control devices, as PM emissions increase, the ratio of larger particulates to smaller particulates increases, and the ratio of SVM emissions to total particulate emissions decreases (*i.e.*, because the larger particulates have a lower concentration of SVM). For emission control trains where PM particle size may remain constant with an increase in PM emissions, the ratio of SVM emissions to PM emissions would remain constant.

D/F and Hg are adsorbed onto the surface of carbonaceous particulates (e.g., activated carbon). Smaller particulates have a larger surface area per mass of particulate than larger particulates, and thus D/F and Hg concentrations would be higher for smaller particulates. Thus, similar to SVM, as PM emissions increase and the ratio of larger particulates to smaller particulates increases, the ratio of D/F and Hg emissions to total particulate emissions should decrease (i.e., because the larger particulates have a lower concentration of D/F and Hg).

The PM CEMS operating parameter limit derived from performance test operations (i.e., calculated from historical CEMS data when the source operated within the regulations) could be increased without exceeding (theoretically) the MACT standards for SVM, LVM, and possibly D/F and Hg by the ratio of the standard for each of those HAPs to the performance test level of each HAP. It would be reasonably conservative, however, to project the higher PM operating parameter limit by the ratio of some fraction of the standard for those HAPs to the performance test level of each HAP. This fraction of the standard would need to allow for adequate flexibility for sources with low PM and HAPs for which PM control is required while ensuring that the standards are being met continuously. A specific percentage of the standard within the range of reasonable values—50% to 100%— could be selected and would be appropriate given the uncertainty of projecting a PM operating limit that is a primary compliance measure for several MACT emissions standards. EPA believes choosing 75% of the standard as the basis for calculating the ratio is a reasonable balance of these issues. The percentage that would be appropriate is a point of interest for the Agency.

Given that the PM CEMS operating parameter limit is a compliance measure for SVM, LVM, and possibly D/F and Hg the allowable higher projected PM CEMS operating parameter limit would be the lowest of the values projected for each of these standards. For example, if the projected PM CEMS operating parameter limit based on the ratio of 75% of the SVM standard to the SVM performance test level was lower than the PM CEMS operating parameter limit projections for LVM (and possibly D/F and Hg), then the SVM-projected PM CEMS operating parameter limit would be used to ensure that the SVM standard was not exceeded at the higher projected PM operating parameter limit.

The Agency is concerned, however, about increasing the PM CEMS operating parameter limit itself by the ratios discussed above. This is because the limit would be established at the upper end of the range of actual CEMS readings, or perhaps at levels that statistically exceed what would be expected. See above discussion of options for calculating the PM CEMS operating parameter limit. It may be more appropriate to project the higher limit using the following options.

Under option 1, the ratio determined above would be applied to the average PM emissions over time determined by the PM CEMS instead of applying the ratio directly to the unadjusted PM CEMS limit itself. The product of the ratio and the average PM emissions would then be subtracted from the average emissions to determine the correction to the PM CEMS operating parameter limit. This correction would then be added to the PM CEMS operating parameter limit to determine the revised PM CEMS operating parameter limit. Using the example described above and assuming average PM CEMS emissions are 2 mg/dscm, the lowest ratio (6.8 for PM) would be multiplied by the average PM emissions (2x6.8 = 13.6) and the average emissions would be subtracted from this product (13.6–2). This difference (11.6) would be added to the PM CEMS operating parameter limit to obtain the revised PM CEMS operating parameter limit.

Under option 2, the PM CEMS recordings during the performance test would be analyzed to calculate a PM CEMS operating parameter limit and that limit would be increased by the factor defined by the ratio discussed above (e.g., 6.8 in the first example). This approach would ensure that infrequent high PM episodes that occurred over months of CEMS operations would not be driving a PM CEMS limit that was then projected further upward using the factors discussed above (unless those high PM episodes actually occurred during the performance test). Given the truncated emissions database (i.e., the performance test) for calculating the higher projected limit under this option, however, the limit may in fact be lower than the limit normally calculated from the full CEMS emissions database (i.e., without attempted to project a higher limit). In this case, the limit which is numerically higher would be used.

The Agency requests information on which approach would be more appropriate for projecting a higher PM CEMS operating parameter limit.

c. Ensuring that the higher projected PM CEMS operating parameter limit

[23] The Agency is considering comments that significant D/F may not be adsorbed on emitted PM in all cases. Cement and lightweight kiln PM, in particular, is generally process dust (i.e., raw material) that has little affinity for absorbing D/F.

does not exceed the MACT PM standard. The PM CEMS operating parameter limit would also be used to ensure compliance with the MACT PM standard. We reiterate that the PM CEMS operating parameter limit is not a measure of the emissions standard—the emissions standard is defined in the rule as being measured by using manual methods—it is instead an operating parameter limit used to ensure compliance with the applicable standards. As discussed in section 1, above, it is likely that due to several factors the PM CEMS operating parameter would have a different numerical value that the MACT PM standard.

One reason for different numerical values is the use of different techniques (i.e., one is manual methods based while the other is CEMS-based) to determine a PM emissions value. The use of a manual method test to determine a value is only a limited-time (e.g., 3 to 24 hours every five years) measure of emissions, whereas a CEMS is a continuous measure of emissions (e.g., ~1 minute readings all the time). Although the manual method will likely be a measure of ''high-end'' PM emissions during performance testing, it may not account for all potential variability during normal operations. The use of a CEMS to monitor PM emissions is a way to continuously measure the variability of (both low and high) PM emissions, inherent in any engineered system.

Additionally, different values may be a result of the different averaging periods stated for manual methods-based PM standard and the PM CEMS operating parameter limit. See section 4, above, for a discussion of the interrelationship between a numerical value of a limit or standard and the averaging period. Having a PM CEMS operating parameter limit with a different, possibly higher, numerical limit is permissible and does not negate the value of the PM CEMS operating parameter, provided there is reasonable correlation between the operating parameter and the MACT PM standard. This section explains how EPA would ensure that the numerically larger, revised PM CEMS operating parameter limit would not violate the national PM standard.

Ensuring that the higher projected PM CEMS operating parameter limit does not exceed the MACT PM standard is complicated by the fact that the PM operating parameter limit would be CEMS-based while the MACT PM standard would be manual method-based. Nonetheless, compliance with the MACT PM standard can be ensured by limiting the increase in the PM CEMS operating parameter limit (i.e., the projected PM CEMS operating parameter limit divided by the limit prior to projection) to the ratio of the MACT PM standard to the performance test PM level on a manual method basis. Given that projections rather than measured values would be used to ensure compliance with a standard, it may be prudent to limit the increase in the projected PM CEMS operating parameter limit to the ratio of 75% of the MACT PM standard to the performance test PM level. A conservative factor of 75% is within the range of reasonable values the Agency could have selected—50% to 100%. Regarding the specific percentage EPA chooses, the reader is referred to the previous discussion regarding the percentage EPA chooses for the HAP standards that require PM control to ensure compliance.

Using the example from above and making the same assumptions, the ratios would be calculated using 75 μ/dscm, 41μ/dscm, and 26 mg/dscm in the numerator for SVM, LVM, and PM. These values are 75% of the standards for incinerators EPA discussed in the May 2, 1997, HWC NODA. The resulting rations would be 7.5, 5.9, and 5.1. Since the ratio calculated for PM is the lowest, ratio used to determine the revised PM CEMS operating parameter limit would be 5.1.

d. Establishing Revised Operating Parameter Limits for the PM Control Device Corresponding to the Higher Projected PM CEMS Operating Parameter Limit. Ideally, PM control device operating parameter limits (e.g, pressure drop across a fabric filter) should be established to ensure compliance with the higher projected PM CEMS operating parameter limit for compliance purposes while the CEMS is malfunctioning. Absent these revised (i.e., less stringent) operating parameter limits, the source would be required to: (1) Comply with the more stringent operating parameter limits established during the performance test that correspond to the original PM CEMS operating parameter limit; or (2) ensure that a back-up CEMS is always available.

The Agency is considering an approach to establish revised operating parameter limits for the PM control device corresponding to operations at the higher projected PM CEMS operating parameter limit. Under this approach, the source would analyze the historical operating parameter values during those periods of time that PM emissions were close to the higher projected PM CEMS operating parameter limit. Issues that must be addressed, include: (1) What range of PM CEMS operating parameter limit values should be considered to develop the database for PM control device operating parameter values; and (2) how should the database be analyzed to identify appropriate limits.

It may be appropriate to establish the revised PM control device operating parameter limits based on the 90th percentile of values that occur when PM levels are within 75% of the higher projected PM CEMS operating parameter limit. This would help ensure that a significant data set was available for evaluation and that the limits were not based on the most lenient values recorded. This is important because the higher projected PM CEMS operating parameter limit is likely to be well beyond the calibration curve.[24]

Based on further analysis, the Agency may consider other approaches to define an appropriate data set of PM control device operating limits and identify appropriate limits (e.g., considering a different percentage of the historical data and/or basing the limit on a different percentile of data). Alternatively, the Agency may conclude that these approaches to revise the performance test-based operating parameter limits would be too complicated or difficult for regulatory officials to oversee, or that it would be difficult to confirm compliance with the standards. In this event, sources would be required to continue to comply with the PM control device operating parameter limits established during the performance test when the CEMS malfunctions even though the PM CEMS operating parameter limit has been projected upward under procedures discussed above.

e. Implementing the Variance. Sources requesting the variance to project a higher PM CEMS operating parameter limit would include the request with the Certification of PM CEMS Performance (CoP) that would be submitted within 12 months after the Compliance Date. The variance request must include documentation of the analyses described above to identify the higher projected PM CEMS operating parameter limit and the revised, PM control device operating parameters associated with the higher projected PM

[24] A source would be allowed to operate infrequently at levels approaching a higher, projected PM CEMS operating parameter limit that is beyond the calibration curve. If, however, a source operates for prolonged periods at levels above the calibration curve, it must perform Method 5 tests at those higher concentrations and include those higher PM levels in the POM CEMS calibration. See discussion on extrapolating PM CEMS calibration data elsewhere in today's notice.

operating parameter limit. Sources would be allowed to comply with the higher projected PM CEMS operating parameter limit immediately upon submitting the CoP. Regulatory officials would have three months to review the variance request, however, and to notify the source of intent to disapprove the higher projected PM CEMS operating parameter limit (or the associated revised PM control device operating parameter limits for use during CEMS malfunctions). In such cases, the regulatory officials would provide the basis of their initial decision and provide the source with an opportunity to present, within 30 calendar days, additional information before final action on the variance.

7. EPA's PM CEMS Testing Program to Identify a CEMS-Based Emission Level Achievable by MACT-Controlled Sources

The Agency is undertaking an additional PM CEMS testing program to identify CEMS-based emission levels that are achievable by hazardous waste combustors (i.e., hazardous waste burning incinerators, cement kilns, and lightweight aggregate kilns) using MACT control. The testing is scheduled to begin in December 1997 and results should be analyzed by December 1998. The Agency is working with representatives of the regulated community to identify one source in each of the three source categories that is using MACT control and that would be likely to define the most achievable level (i.e., considering average PM emissions and emissions variability) for MACT-controlled sources.

Although these test results will not be used as part of the final rule, the data will be valuable to permitting authorities and the regulated community as a PM CEMS emission benchmark that is achievable using MACT controls. Permitting authorities could use the data to identify sources that appear to have established an anomalously high CEMS-based PM operating parameter limit, and as a framework within which to review Certifications of Performance in a cost-effective manner. Likewise, sources wanting to ensure that their facility is operating in a manner representative of MACT control could use this information to see if their CEMS-based PM operating parameter limits are below the levels that MACT sources show are achievable using MACT control.

C. RCA Test Frequency

In the proposed rule, EPA said that facilities would be required to perform relative calibration audits (RCAs) on their PM CEMS every 18 months. This testing interval would be relaxed to 30 months for small on-site incinerators. These time intervals coincided with the proposed Performance Test intervals. If these tests can be performed at the same time as the performance tests, cost savings can be realized by the facility relative to what the costs would be if the tests were not conducted at the same time. As a result of the analysis of comments on the performance test frequency, the Agency is considering requiring all facilities to conduct comprehensive performance tests every five (5) years. Therefore, we prefer that RCA tests be performed every five years.

One of the goals of the PM CEMS Demonstration Test program was to quantitatively define what RCA frequency is appropriate for PM CEMS. Unfortunately, variability in the manual method masks any error that can be identified as being caused by drift in the PM CEMS over time. Therefore, we are unable to use the PM CEMS data from the demonstration tests to extrapolate to an appropriate re-test frequency [25].

Lacking these long-term data, it is important to look at what is done in other countries to qualitatively determine this RCA test frequency. The United Kingdom (UK) requires that retesting be conducted at least every year, and in Germany testing is required every 3 to 5 years. The RCA test frequency could therefore reasonably be between one and five years. The UK, though, heavily relies on manual methods testing—so much so that they believe using gas bottles is cost prohibitive for gaseous (*e.g.*, NO_x and SO_x) CEMS testing and rely on manual methods testing instead. EPA is inclined to believe that the German's longer retest frequency is more consistent with our regulatory framework.

D. Extrapolating PM CEMS Calibration Data

One-minute or batch PM CEMS readings during the course of operations are likely to occasionally exceed the highest M5i calibration point during the course of PM CEMS use. This is because the manual method results used to derive the calibration are (nominally) one hour block averages of emissions over the sampling period while the PM CEMS readings are averages of emissions on the order of minutes. See section 4, above, regarding the interrelationship the numerical limits of a standard or limit and its associated averaging period. In addition, emissions variability within the sampling period of M5 is not likely to represent the full range of emissions variability over all periods of PM CEMS operation. Therefore, a system is needed to allow the extrapolation of data beyond the calibration curve.

The revised calibration and implementation scheme described in today's notice (*i.e.*, multiple calibrations (for light-scattering PM CEMS) over the full range of emissions at the facility) will result in a calibration from which some reasonable and limited extrapolation is reasonable. Therefore, the Agency proposes to allow the calibration curve to be used for measurements up to 25% more than the maximum M5 [26] measurement observed during the calibration. (This will be referred to as the ''125% point.'') Beyond this point (125% of the highest M5 measurement) EPA is concerned that extrapolating the calibration data might lead to false compliance determinations. Therefore, some environmentally conservative approach must be employed.

Note that the ability to extrapolate beyond the calibration curve in no way would mitigate the facility's requirement to calibrate over its full range of PM emissions. If a facility experiences continuous periods of PM emissions beyond the calibration curve, it would be obligated to perform tests to capture these data into the calibration curve. For example, a facility may determine that it occasionally has several continuous hours of PM CEMS readings which are greater than the 125% point. Several continuous hours are enough time to conduct a M5 test, so the facility would be obligated to conduct M5 tests at this emissions level and include these data in the calibration curve used at the facility. EPA requests comment on how long a period of sustained operations at emissions levels greater than the 125% point would be necessary to require these additional calibration data points.

1. Extrapolating Light-Scattering PM CEMS Calibration Data

If it is necessary to extrapolate beyond the 125% point, an environmentally conservative approach would consist of determining the slope of the calibration curve at the 125% point and have the calibration continue with a slope equal to or greater than the slope of the curve at the 125% point. For example if the

[25] In fact as method accuracy improved, the PM CEMS calibration statistics got *better* over time. Extrapolating this data would lead to erroneous conclusion that no retesting is ever needed, since the PM CEMS calibration keeps getting better.

[26] In this context, M5 is meant to refer to all the methods (Method 5, Method 5A, . . ., Method 5I) used to calibrate PM CEMS.

curve is a log-normal relation, the slope of the curve at the 125% point would be positive, but less than the slope of a straight line that would also describe the correlation between method results and PM CEMS outputs. Therefore, *if a log-normal relationship best describes the calibration curve*, facilities should extrapolate beyond the 125% point using a *straight line* beyond the 125% point. The slope of the straight line would be the slope of the log-normal curve, taken from the points on the calibration curve associated with the lowest M5 measurement and the 125% point.

If the calibration curve is best described by a straight line arithmetic fit, then extrapolating beyond this 125% point would depend on the slope of any *quadratic* fit of the data. If the quadratic curve slopes *negative at higher values of PM CEMS outputs*, then the straight line defined by the calibration would be used to extrapolate beyond the 125% point. If the quadratic fit slopes *positive at higher values of PM CEMS outputs*, then the quadratic fit would be used beyond the 125% point.

Finally, if the calibration curve is a quadratic fit, then the quadratic fit can be used to extrapolate all data [27].

2. Extrapolation of Beta-gage Calibration Data

For Beta-gage PM CEMS, extrapolating beyond the 125% point would involve continuing the straight line defined by its linear calibration equation. Beta-gage PM CEMS apparently are not sensitive to particle changes in the physical characteristics of particulate, as the light-scattering PM CEMS are. Therefore, a straight-line fit best represents the calibration for beta-gage PM CEMS at all times.

E. Need to Calibrate to Twice the Emissions Standard

One issue raised by commenters during the comment period for the proposed rule was EPA's proposal that facilities calibrate the PM CEMS to twice the emissions limit. Commenters raised concerns that facilities might not be able to emit PM at a concentration equal to twice the standard. They also said this aspect of the proposal in essence asks facilities to violate the emission standard and could lead to an enforcement action against the facility. Commenters also had concerns that facility personnel may not be sufficiently familiar with the various process and APCD factors to acceptably calibrate the PM CEMS over the full range of operations experienced at the facility. Each of these points are discussed in the following paragraphs.

EPA agrees that it would be difficult for many facilities to emit PM at any prescribed level. Many facilities have redundancies in their PM APCDs to such an extent that emitting to the emissions limit may be problematic. However to have accurate PM CEMS measurements, facilities need to calibrate the PM CEMS over the full range of emissions experienced at the facility. As a result, it would be necessary to require facilities to calibrate the PM CEMS *over the full range of operations, including PM emissions.* This would eliminate the prescriptive nature of how high the calibration needs to be while still addressing the issue that the site-specific calibration of PM CEMS covers the broad range of PM emissions experienced at the facility.

EPA does not agree, however, that this approach could cause facilities to violate the manual method MACT PM standard. The PM standard would be defined as the average of three manual method measurements. Any single run above the standard would not be a violation by itself. Average emissions over the calibration would be below the standard for a source equipped with MACT controls. Therefore, we expect that sources would be able to calibrate PM CEMS at levels higher than the PM emissions standard and still remain in compliance with the standard. If this is not practical, however, EPA may consider a waiver of the manual method PM standard during periods of calibrating (and performing RCA tests of) the PM CEMS. The need to obtain and audit an accurate calibration at and above the PM standard may override any concerns about high short-term PM emissions. EPA would want to limit the frequency and duration of calibration runs that exceed the standard, however. We request comment regarding how such limits could be implemented. One way this could occur is to require that sources request in the performance test plan approval to exceed the standard during calibration. Approval to exceed the standard would only be required if the average of all PM CEMS calibration runs is greater than the PM standard.

The revised draft PS 11 states that different PM levels should be obtained by varying process conditions or, alternatively, by adjusting the APC system. It is relatively silent in presenting a well-defined protocol with guidelines on how EPA expects calibration tests to be performed. This is because individual sources should know best how to vary their PM emissions. For instance, inserting a throttle plate in lieu of one (or several) bags in a baghouse and varying the opening of the throttle plate(s) is likely an effective way to vary PM concentration for the calibration at a facility equipped with a baghouse. Varying power to an ESP and simulating various failure modes (such as lowering the temperature in the ESP to cause condensation on the plates) is likely vary PM sufficiently for the calibration at sources equipped with an ESP.

The experience gained during the PM CEMS Demonstration tests suggests that one can obtain a suitable range of emissions by varying process conditions that affect inlet PM loading to the last in a series of PM APCDs and adjusting the performance of that last APCD. Exactly how this is accomplished at a given facility will vary and depend on the waste fed to the unit, how the facility is designed and operated, and in what order the APCDs are configured. Therefore, the language in the revised PS11 is adequate. More prescriptive language may not work in most cases.

Finally, EPA, will be working with industry representatives to develop approaches to better describe how calibration tests should be performed at individual HWC facilities. EPA expects to provide this information in a technical implementation guide.

F. Allowing PM CEMS to be Used In-lieu of Method 5 Tests

Although the PM CEMS would be required only as an operating parameter, EPA intends to allow facilities to voluntarily elect to use the PM CEMS for compliance with manual methods-based PM standards. Using the PM CEMS for compliance is expected to provide a cost savings to the facility since the facility would not have to conduct periodic Method 5 tests to document compliance with PM standards. Instead a facility could elect to use the PM CEMS measurements during these periodic tests. This would be acceptable if the facility uses the block average of the PM CEMS readings during the M29 tests for the SVM and LVM standards as the particulate ''method result.''

G. Waivers from the PM CEMS Requirements

In the proposed rule, EPA requested comment on waiving the PM and Hg CEMS requirement for small, on-site incinerators. See 61 FR at 17439. Upon

[27] **Note:** If the slope of the quadratic fit is ever less than zero for values of PM CEMS output above what was measured by the manual method (that is, it ever has a negative slope), this indicates that the correlation between M5 measurements and PM CEMS output *is not represented by a quadratic fit* and that another mathematical model should be used.

further consideration, EPA has identified other classes of incinerators where a PM CEMS requirement may be impractical. If the PM CEMS requirement is waived for a given source, the facility would have to comply with operating parameter limits to assure compliance for PM. Of course, a facility could always elect to use a PM CEMS for compliance even if a waiver procedure is promulgated for that facility.

1. Waiver of PM and Hg CEMS Requirements for Small On-site Incinerators

EPA is considering whether to waive the PM and Hg CEMS requirements for small, on-site incinerators (SOSI). See the proposed rule, 61 FR at 17439. If a waiver is promulgated, a SOSI would be required to use existing operating parameters in lieu of a PM CEMS to document compliance with the PM, SVM, and LVM standards.

2. PM CEMS Waiver for Sources With Short Life-Spans

Given the PM CEMS compliance schedule discussed in section IV.A, above, facilities with short, fixed life-spans raise several issues. For instance, certain government-run incinerators are constructed for the purposes of destroying waste that is too hazardous to transport off-site. These incinerators often have short life spans (ranging from months to a few years) and are constructed to fulfill the requirements of a consent decree, memorandum of understanding (MOU), or other legally binding enforcement agreement. For example the Department of Defense (DoD), acting under a MOU with EPA, may construct an incinerator to destroy nerve-gas agents that are too hazardous to transport. When this activity is complete, the MOU would obligate DoD to dismantle and destroy the incinerator.

It does not seem practical to mandate that these facilities use PM CEMS if they will be in service for less than, or slightly longer than, the implementation schedule just discussed. Therefore, EPA is considering a waiver of the PM CEMS requirement for HWCs operating under a legally binding agreement that ensures the source will stop burning hazardous waste within three years of the Compliance Date.

EPA could likewise grant a waiver from the PM CEMS requirement for facilities with short life-spans that lack the legally binding agreement discussed above. However, EPA is concerned that without a legally binding agreement to cease operations, the Agency lacks certainty that operations will cease by a prescribed date. For this reason, EPA would consider a waiver for other facilities that plan to cease operations within the first year of compliance with the HWC regulations, that is, prior to the need to use PM CEMS as the operating parameter for PM control. Facilities that operate after the first year would need to have PM CEMS installed, calibrated, meet data availability requirements, determine the PM CEMS operating parameter limit, and use the PM CEMS as the primary operating parameter for PM control.

3. Other Sources

As discussed in section III.C. of this NODA, EPA may be unable to determine whether the results of the PM CEMS demonstration test can be transferred to two classes of incinerators: Those with waste heat boilers and mobile incinerators. See section III.C. for more information.

V. Other Issues Concerning CEMS and Test Methods for HWCs

A. Performance Specifications for Optional CEMS

In the proposed rule, EPA proposed other performance specifications for multi-metals, hydrochloric acid (HCl), and chlorine gas (Cl_2) CEMS. These performance specifications were proposed as PS10, 13, and 14, respectively. Based on what EPA has learned during the course of demonstrating PM and Hg CEMS, EPA expects not to promulgate the draft performance specifications (PS) for these CEMS at the time of the HWC final rule. As discussed in section II of today's notice, EPA does not plan to promulgate a PS for total mercury (Hg) CEMS either. The Agency has not tested MM and Cl_2 CEMS to determine what performance is achievable by the CEMS. Hg CEMS have not been demonstrated as a compliance tool for universal application to all HWCs. EPA has tested HCl CEMS in preparation for the medical waste incinerator rulemaking but did not require the use of HCl CEMS in that rulemaking (see discussion starting at 62 FR 48360, September 15, 1997) and does not believe requiring HCl CEMS for the HWC rulemaking is appropriate either (see 61 FR at 17433).

Instead, EPA will consider enabling sources to demonstrate these CEMS on a site-specific basis and to develop performance levels for the CEMS as part of the demonstration. The Agency's only concern is that the CEMS be proven to be a better and more reliable indicator of compliance for the HAP or standard than the requirements specified in the regulations. This approach is now being used to demonstrate a multi-metals CEMS at the Von Roll incinerator in East Liverpool, Ohio.

EPA intends to accumulate the CEMS demonstration results and experience and will share that information with permitting authorities and sources wishing to document compliance with CEMS. Since the HCl CEMS have been demonstrated by EPA, we believe the HCl CEMS performance specification could more easily be used as a point of departure for implementing HCl CEMS at a given facility.

B. Stack Sampling Test Methods

Another question is whether EPA should simplify the task of determining the appropriate manual method tests to be used for compliance. Currently, stack sampling and analysis methods for HWCs are (with a few exceptions) located in RCRA's SW–846 for compliance with the BIF and incinerator rules, and in 40 CFR part 60, Appendix A for compliance with the NSPS and other air rules. Facilities could be required to perform two identical tests, one for compliance with MACT or RCRA and one for compliance with other air rules, using identical test methods simply because one method is an ''SW–846'' method and the other an ''air method.''

Stack test methods HWCs use for compliance should be found in one place to facilitate compliance. EPA intends to reference 40 CFR part 60, Appendix A, when it requires a specific stack-sampling test method. A few SW–846 methods do not have equivalents in 40 CFR part 60, Appendix A, namely the VOST and semi-VOST methods. In these few cases, EPA would continue to refer to these SW–846 methods as well.

This discussion only affects stack sampling methods and has no affect on feedstream sampling and analysis.

Dated: December 19, 1997.

Matt Hale,

Acting Director, Office of Solid Waste.

Appendix I—Method 5i

Method 5I—Determination of Low Level Particulate Matter Emissions From Stationary Sources

1. Applicability and Principal

1.1 Applicability. This method applies to the determination of low level particulate matter (PM) emissions from stationary sources and facilities performing calibrations or calibration audits of particulate matter continuous emission monitors as specified in the regulations. The method is effective for total train catches of 50 mg or less. The minimum detection limit for this method can be determined by repeatedly collecting and analyzing blank samples. A blank sample is a sample of blank air collected and analyzed

in the normal manner. The limit of detection can be calculated by collecting and analyzing seven blank samples and then calculating an estimate of the sample standard deviation of these blanks. The limit of detection would be three times the estimated sample standard deviation.

1.2 Principal. The PM is withdrawn isokinetically from the source and collected on a 47 mm glass fiber filter maintained at a temperature of 120° ±14°C (248° ±25°F). The PM mass, which includes any material that condenses at or above the filtration temperature, is determined gravimetrically after the removal of uncombined water.

2. Apparatus

2.1 Sampling Train. The sampling train configuration is the same as shown in Method 5, Figure 5–1. The sampling train consists of the following components: Pitot Tube, Probe liner Differential Pressure Gauge, Filter Heating System, Condenser, Metering System, Barometer, and Gas Density Determination Equipment. Same as Method 5, Sections 2.1.2 to 2.1.4, 2.1.6 and 2.1.7 to 2.1.10, respectively.

2.1.1 Probe Nozzle. Same as Method 5, Sections 2.1.1 with the exception that it is constructed of Borosilicate or quartz glass tubing with sharp, tapered leading edge.

2.1.2 Filter Holder. The filter holder for this sampling train is constructed of Borosilicate or quartz glass front cover designed to hold a 47 mm glass fiber filter, with a stainless steel filter support, a silicone rubber or Viton O-ring and Teflon tape seal. The holder design will provide a positive seal against leakage from the outside or around the filter. The filter holder assembly fits into a stainless steel filter holder and attaches immediately at the outlet of the probe (or cyclone, if used). The tare weight of the filter, Borosilicate or quartz glass, stainless steel filter support, silicone rubber or Viton O-ring and Teflon tape seal will not exceed 31 grams. The filter holder is designed to use a 47 mm glass fiber filter meeting the criteria in section 3.1.1 of Method 5. Figure 5I–1 presents a schematic of the filter holder system. These units are commercially available.

2.1.3 Glass Plugs and Clamps. Once the filter holder has been assembled, desiccated and tared it is critical that the filter be isolated from any external sources of contamination. This can be accomplished by covering the leak-free ground glass or O-ring socket on the front half glass filter cover with a Borosilicate or quartz ground glass plug. The plug shall be secured in place with the appropriate sized laboratory impinger clamp or any system that can ensure a leak-free fitting. It is beneficial to place the glass plug on the inlet socket as soon as the unit is assembled, however do not tare the assembly with the plug in place, as this will increase the tare weight introducing additional error into the final weighings.

2.2 Sample Recovery. Is the same as Method 5 for: Glass Sample Storage Containers, Graduated Cylinder and/or Balance, Plastic Storage Containers, Funnel and Rubber Policeman (Method 5 sections 2.2.3, 2.2.5—2.2.8, respectively) with the following exceptions:

2.2.1 Probe-Liner and Probe-Nozzle Brushes. Teflon® and nylon bristle brushes with stainless steel wire handles, should be used to clean the probe. The probe brush shall have extensions (at least as long as the probe) of Nylon, Teflon®, or similarly inert material. The brushes shall be properly sized and shaped to brush out the probe liner and nozzle.

2.2.2 Wash Bottles—Two. Teflon® wash bottles are recommended however, polyethylene wash bottles may be used at the option of the tester. It is recommended that acetone not be stored in polyethylene bottles for longer than a month.

2.2.3 Sample Holder: A portable carrying case with clean compartments of sufficient size to accommodate each filter assembly. The filters shall be able to lay flat with the stainless steel filter support placed down in the compartment. This system should have an air tight seal to prevent contamination to the filters during transport to and from the field. It is recommended that desiccant be used in this case. The desiccant, if used, is housed in a container that is capped with a 0.1 micron screen to ensure that no dust particles can contaminate the outside of the filter housings during transport.

2.3 Analysis. The same as Method 5 for sections 2.3.2–2.3.7 with the following exception:

2.3.1 Teflon® Liner: Teflon liners are used for the analysis of the probe and nozzle particulate catch. The liners are washed with soap (Alconox or similar low residue laboratory soap) and water. Each liner is then rinsed with DI Water followed by an acetone (low residue) rinse. The static charge on the liners is removed using an anti-static rinse and then the liners are oven dried and desiccated.

3. Reagents

3.1 Sampling. The reagents used in sampling are the same as Method 5 for: Silica Gel, Water, Crushed Ice, Sample Recovery Reagents, and Desiccant (sections 3.1.2–3.1.5, 3.2–3.3.2) with the following exceptions:

3.1.1 Filters. 47 mm Glass fiber filters, without organic binder, exhibiting at least 99.95 percent efficiency (<0.05 percent penetration) on 0.3-micron dioctyl phthalate smoke particles. The filter efficiency test shall be conducted in accordance with ASTM Standard Method D2986–71 (Reapproved 1978) (incorporated by reference—see § 60.17). Test data from the supplier's quality control program are sufficient for this purpose. In sources containing SO_2 or SO_3, the filter material must be of a type that is unreactive to SO_2 or SO_3. Citation 10 in the Bibliography for Method 5, may be used to select the appropriate filter.

3.1.2 Stopcock Grease. Stopcock grease cannot be used with this sampling train. It is recommended that the sampling train be configured with glass joints, using o-ring seals or screw-on connectors with Teflon® sleeves, or similar.

3.1.3 Acetone. Pesticide grade or equivalent low residue type Acetone is used for the recovery of particulate matter from the probe and nozzle.

3.1.4 Latex Gloves. Disposable, powder free, latex surgical gloves are used for all handling of the filter housings at all times.

4. Procedure

4.1 Sampling. The complexity of this method is such that, in order to obtain reliable results, testers should be trained and experienced with the test procedures. The sampling procedures are the same as Method 5 for: Preliminary Determinations, Leak-Check Procedures, Particulate Train Operation (sections 4.1.2, 4.1.4, 4.1.5 respectively) with the following exceptions:

4.1.1 Pretest Preparation. Is the same as Method 5, section 4.1.1 with the following exception: Label filter supports prior to loading filters into the holder assembly. This can be accomplished with a diamond scribe. As an alternative, label the shipping container compartments (glass or plastic) and keep the filter holder assemblies in these compartments at all times except during sampling and weighing. Using the powder free latex surgical gloves (surgical gloves must be used at all times when handling the filter holder assemblies). Place the Viton® O-ring on the back of the filter housing in the O-ring grove. Place a 47mm glass fiber filter on the O-ring with the face down. Place a stainless steel filter holder against the back of the filter. Carefully wrap ¼ inch wide Teflon® tape one time around the outside of the filter holder overlapping the stainless steel filter support by approximately ⅛ inch. Gently brush the Teflon® tape down on the back of the stainless steel filter support. Desiccate the filter holder assemblies at 20±5.6° C (68±10° F) and ambient pressure for at least 24 hours and weigh at intervals of at least 6 hours to a constant weight, i.e., 0.5 mg change from previous weighing; record results to the nearest 0.1 mg. During each weighing the filter holder assemblies must not be exposed to the laboratory atmosphere for a period greater than 2 minutes and a relative humidity above 30 percent. Alternatively (unless otherwise specified by the Administrator), the filters holder assemblies may be oven dried at 105° C (220° F) for 2 to 3 hours, desiccated for 2 hours, and weighed.

4.1.2 Same as Method 5, section 4.1.2.

4.1.3 Preparation of Collection Train. Is the same as Method 5, section 4.1.3 with the following exception: During preparation and assembly of the sampling train, keep all openings where contamination can occur covered until just prior to assembly or until sampling is about to begin. Using clean disposable powder free latex surgical gloves, place a labeled (identified) and weighed filter holder assembly in the stainless holder for the assembly. Then place this whole unit in the Method 5 hot box and attach it to the probe using clean standard connectors. Do not use any stopcock grease.

4.2 Sample Recovery. Proper cleanup procedure begins as soon as the probe is removed from the stack at the end of the sampling period. Allow the probe to cool. When the probe can be safely handled, wipe off all external particulate matter near the tip of the probe nozzle and place a cap over it to prevent losing or gaining particulate matter. Do not cap off the probe tip tightly while the sampling train is cooling down as this would create a vacuum in the filter holder, thus drawing water from the impingers into the filter holder. Before

moving the sample train to the cleanup site, remove the probe from the sample train and cap the open outlet of the probe. Be careful not to lose any condensate that might be present. Cap the filter inlet using a standard ground glass plug and secure the cap with an impinger clamp. Remove the umbilical cord from the last impinger and cap the impinger. If a flexible line is used between the first impinger or condenser and the filter holder, disconnect the line at the filter holder and let any condensed water or liquid drain into the impingers or condenser. Transfer the probe and filter-impinger assembly to the cleanup area. This area should be clean and protected from the wind so that the chances of contaminating or losing the sample will be minimized. Save a portion of the acetone used for cleanup of the probe and nozzle as a blank. Take 200 ml of this acetone directly from the wash bottle being used and place it in a glass sample container labeled ''acetone blank.'' Inspect the train prior to and during disassembly and note any abnormal conditions. Treat the samples as follows:

Container No. 1. Carefully remove the filter holder assembly from the Method 5 hot box and place it in the transport case. Use a pair of clean disposable powder free latex surgical gloves to handle the filter holder assembly. If the transport case is being used to identify and track the filter holder assemblies the entire transport container will need to be of sufficient size and shape to fit in the desiccator at the laboratory. It is important to ensure that the assemblies have cooled sufficiently to prevent the surgical gloves from melting on the filter holder assembly.

Container No. 2. Same as Method 5 Container No. 2 with the exception that it is recommended that only glass sample containers be used for collection of the sample from the probe and nozzle to minimize the potential for background contamination.

Container No. 3. Same as Method 5 Container No. 3.

4.3 Analysis. Same as Method 5 section 4.3 with the following exceptions:

Container No. 1. Same as Method 5 Section 4.3 Container No. 1 with the following exception: Use disposable powder free latex surgical gloves to remove each of the filter holder assemblies from the desiccator or transport container.

Container No. 2. Same as Method 5 Section 4.3 Container No. 2 with the following exception: It is recommended that the contents of Container 2 be transferred to a 250 ml beaker with a Teflon liner or similar container that has a minimal tare weight prior to bringing to dryness.

Container No. 3. Same as Method 5 Section 4.3 Container No. 3

4.4 Quality Control Procedures. The Quality Control Procedures used in sampling are the same as Method 5 for: Meter Orifice Check and Calibrated Critical Orifice (sections 4.4.1—4.4.2).

5. Calibration.

The Calibration Procedures used are the same as Method 5: Probe Nozzle, Pitot Tube, Metering System, Probe Heater Calibration, Temperature Gauges, Leak Check of Metering System Shown in Method 5 Figure 5–1, Barometer (sections 5.1—5.7).

6. Calculations

The Calculations used are the same as Method 5 for: Nomenclature, Average Dry Gas Meter Temperature and Average Orifice Pressure Drop, Dry Gas Volume, Volume of Water Vapor, Acetone Blank Concentration, Total Particulate Weight, Particulate Concentration, Conversion Factors, Isokinetic Variation, Acceptable Results, Stack Gas Velocity and Volumetric Flow Rate (sections 6.1—6.13).

7. Alternative Procedures

The Alternative Procedures used are the same as Method 5 for: Dry Gas Meter as a Calibration Standard, Critical Orifices As Calibration Standards, (sections 7.1—7.2).

8. Bibliography

The Bibliography used is the same as Method 5.

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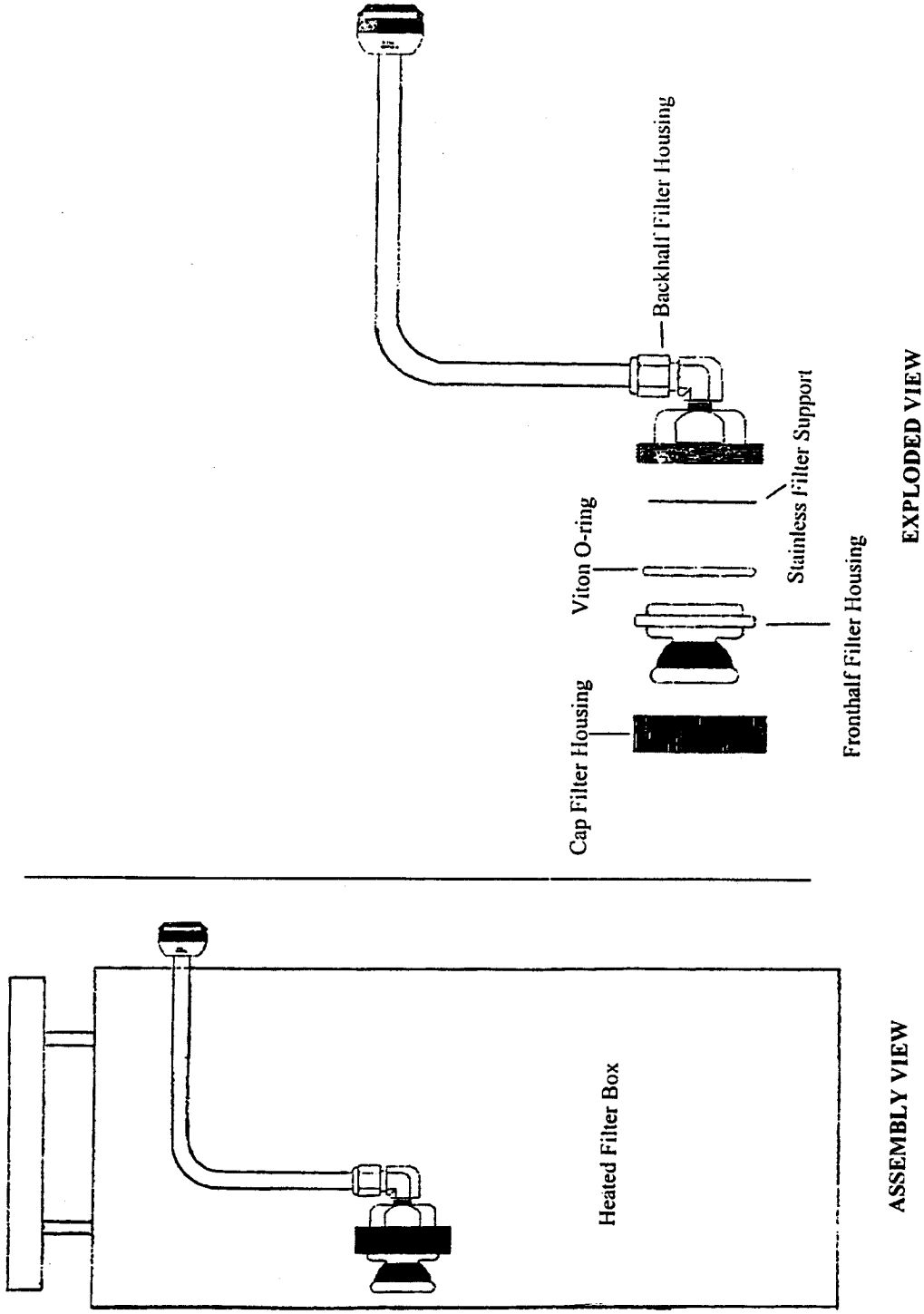

Figure 51-1. Method 5i Filter Housing Configuration.

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Appendix II—Performance Specification 11

PERFORMANCE SPECIFICATION 11—Specifications and test procedures for particulate matter continuous emission monitoring systems in stationary sources.

211.0 Scope and Application

1.1 Analyte. Particulate matter as defined and determined by the Reference Method—Method 5 or Method 5I.

1.2 Applicability.

1.2.1 This specification is for evaluating the acceptability of particulate matter (PM) continuous emission monitoring systems (CEMS) at the time of or soon after installation and whenever specified in the regulations. The CEMS may include, for certain stationary sources, (a) a diluent monitor (i.e., O_2, CO, or other CEMS specified in the applicable regulation), which must meet its own performance specifications found in this appendix, (b) auxiliary monitoring equipment to allow measurement, determination, or input of the gas temperature, pressure, moisture content, and/or dry volume of stack effluent sampled, and (c) an automatic sampling system.

This performance specification requires site specific calibration of the PM CEMS response against manual gravimetric Reference Method measurements. Procedures for extrapolating results beyond the range of particulate mass loadings used to develop the calibration are found in the applicable regulations. A new calibration may be required if conditions at the facility change and result in conditions which are unrepresentative of the previous calibration (i.e., changes in emission control system, concentration of PM emitted, or feed inputs to the device). Since the validity of the calibration may be affected by changes in the physical properties of the particulate (such as density, index of refraction, and size distribution), the limitations of the CEMS used should be evaluated with respect to these possible changes on a site specific basis.

1.2.2 This specification is not designed to evaluate the installed CEMS performance over an extended period of time nor does it identify specific calibration techniques and auxiliary procedures to assess CEMS performance. The source owner or operator, however, is responsible to properly calibrate, maintain, and operate the CEMS. The Administrator may require, under Section 114 of the Act, the operator to conduct CEMS performance evaluations at other times besides the initial test to evaluate the CEMS performance. See Appendix F to Part 60—Procedure 2, Quality Assurance Requirements For Particulate Matter Continuous Emission Monitoring Systems Used For Compliance Determination.

2.0 Summary of Performance Specification.

Procedures for establishing the CEMS calibration are outlined in this performance specification. CEMS installation and measurement location specifications, equipment specifications, performance specifications, and data reduction procedures are also included. Conformance of the CEMS with the Performance Specifications is determined.

3.0 Definitions

3.1 Batch Sampling means the technique of sampling the stack effluent continuously and concentrating the pollutant in some capture medium. The capture medium is moved periodically for analysis after sufficient time has elapsed to concentrate the pollutant to levels detectable by the analyzer. Continuous sampling is ensured by sampling (either on a different part of the capture medium or a different capture medium) while analysis is being performed on a previous sample.

3.2 Calibration Drift (CD) means the difference in the CEMS output readings from the established reference value after a stated period of operation during which no unscheduled maintenance, repair, or manual adjustment took place.

3.3 Calibration means the site-specific correlation between the CEMS output and the PM mass concentration measured by the Reference Method.

3.4 Calibration Standard means a reference material that produces a known and unchanging response when presented to the pollutant analyzer portion of the CEMS, and used to calibrate the drift or response of the analyzer.

3.5 Centroidal Area means a concentric area that is geometrically similar to the stack or duct cross section and is no greater than 1 percent of the stack or duct cross sectional area.

3.6 Confidence Interval means the interval defined by equations 13 and 23 of this performance specification with upper and lower limits within which the CEMS response calibration relation lies with a given level of confidence.

3.7 Continuous Emission Monitoring System (CEMS) means the total equipment required for the determination of particulate matter mass concentration in units of the emission standard. The sample interface, pollutant analyzer, diluent analyzer, other auxiliary data monitor(s) and data recorder are the major subsystems of the CEMS.

3.8 Correlation coefficient means that portion of the statistical evaluation that measures how well the CEMS and Reference Method calibration relation data fit the regression line as defined by equation 16 of this performance specification.

3.9 Data Recorder means that portion of the CEMS that provides a permanent record of the analyzer output and the final PM concentration result in units of the emission standard. The data recorder may provide automatic data reduction and CEMS control capabilities.

3.10 Diluent Analyzer and Other Auxiliary Data Monitor(s) (if applicable) means that portion of the CEMS that sense or otherwise provide the diluent gas (such as O_2 or CO, as specified by the applicable regulations), temperature, pressure, and/or moisture content, and generates an output proportional to the diluent gas concentration or data property.

3.11 Linear Calibration means a CEMS response which is linear relative to the measured PM concentration produced by the Reference Method.

3.12 Path CEMS means a CEMS that measures particulate matter mass concentrations along a path across the stack or duct cross section which is representative of results of the cross-sectional PM concentrations produced by the Reference Method.

3.13 Point CEMS means a CEMS that measures particulate matter mass concentrations either at a single point, or over a small fixed volume or path, which is representative of the cross-sectional PM concentrations produced by the Reference Method.

3.14 Pollutant Analyzer means that portion of the CEMS that senses the particulate matter concentration and generates a proportional output.

3.15 Quadratic Calibration Relation means a CEMS response which has a second order equation to define its relationship to the measured PM concentration produced by the Reference Method.

3.16 Reference Method. The Reference Method for particulate measurements is those methods collectively known as Method 5, found in Appendix A of 40 CFR Part 60. Unless other variants are specified in the regulations, Method 5 shall be used for total train catches exceeding 50 mg (i.e., emissions concentrations of more than 45 mg/dscm). Method 5I shall be used for total train catches of less than or equal to 50 mg (i.e., emissions concentrations of 45 mg/dscm or less). If variants other than Method 5I are used, care should be taken to follow the general procedures described in Method 5I to aid in the elimination of measurement error. Other Reference Methods may be applicable, such as Method 1, 3, or 4. Methods other than Method 5 are referred to in this specification individually by name.

3.17 Representative Results means the results consistent with the acceptance criteria found in section 13.2 of this specification.

3.18 Response Time means the time interval between the start of a step change in the system input and the time when the pollutant analyzer output reaches 95 percent of the final value.

3.19 Sample Interface means that portion of the CEMS used for one or more of the following: sample acquisition, sample delivery, sample conditioning, or protection of the monitor from the effects of the stack effluent.

3.20 Span Value means the upper limit of the CEMS measurement range. The span value shall be documented by the CEMS manufacturer with laboratory data.

3.21 Tolerance Interval means the interval with upper and lower limits within which are contained a specified percentage of the population with a given level of confidence as defined by equation 14 of this performance specification.

3.22 Zero Drift (ZD) means the difference in the CEMS output readings for zero input after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

4.0 Interferences

In the Reference Method a representative sample of particulate is collected on a filter maintained at a temperature in the range

specified by the method, and includes any material that deposits in sample delivery and condenses at or above this filtration temperature after removal of any combined water. Consequently, condensible water droplets or condensible acid gas aerosols (i.e., those with condensation temperatures above those specified by the method) at the measurement location can be interferences for PM CEMS if the necessary precautions are not systematically met. Interferences may develop for CEMS installed downstream of a wet air pollution control system or any other conditions that produce flue gases which are normally or occasionally saturated with water or acid gases prior to release to the atmosphere. For such conditions, the CEMS must extract and heat a representative sample of the flue gas for measurement to simulate results produced by the Reference Method. Independent of the CEMS measurement technology and extractive technique, a configuration simulating the Reference Method is required to assure that: (1) there is no formation or deposition of particulate in sample delivery from the stack or duct; and (2) the pollutant analyzer portion of the CEMS measures only native particulate. Performance of a CEMS design configured to eliminate interferences with condensible water and/or acid gases must be documented by the CEMS manufacturer (see Section 6.1.3 of this performance specification for specific equipment heating requirements). In-situ CEMS measurement technologies that are not free of interferences from any condensible constituent in the flue gas are prohibited in stack or duct flue gas conditions which are normally or occasionally saturated with water or acid gases.

5.0 Safety

The procedures required under this performance specification may involve hazardous materials, operations, site conditions, and equipment. This performance specification does not purport to address all of the safety problems associated with these procedures. It is the responsibility of the user to establish appropriate safety and health practices and determine the applicable regulatory limitations prior to performing these procedures. The CEMS users' manual and materials recommended by the Reference Method should be consulted for specific precautions to be taken.

6.0 Equipment and Supplies

6.1 CEMS Equipment Specifications

6.1.1 Data Recorder Scale. The CEMS data recorder output range must include zero and a high level value. The high level value is chosen by the source owner or operator and is defined as follows:

6.1.1.1 For a CEMS installed to measure emissions as required with an applicable regulation, the high level value between 1.5 times the emission standard and the span value specified in the applicable regulation is adequate.

6.1.1.2 Alternative high-level values may be used, provided the source can measure emissions throughout the full range of emissions concentrations experienced by the facility.

6.1.1.3 The data recorder output must be established so that the high level value would read between 90 and 100 percent of the data recorder full scale. (This scale requirement may only be applicable to analog data recorders.) The zero and high level calibration gas, filter, or other appropriate media values should be used to establish the data recorder scale.

6.1.1.4 The high level value must be equal to the span value. If a lower high level value is used, the CEMS must have the capability of providing multiple outputs with different high level values (one of which is equal to the span value) or be capable of automatically changing the high level value as required (up to the span value) such that the measured value does not exceed 95 percent of the high level value.

6.1.1.5 Span. The span of the instrument shall be sufficient to determine the highest concentration of pollutant at the facility. The span value shall be documented by the CEMS manufacturer with laboratory data.

6.1.2 The CEMS design should also allow daily determination and recording of calibration drift at the zero and high-level values. If this is not possible or practical, the design must allow these determinations and recordings to be conducted at a low-level (zero to 20 percent of the high-level value) and at a value between 50 and 100 percent of the high-level value. In special cases, the Administrator may approve a single-point calibration drift determination.

6.1.3 Specification for Saturated Flue Gas. For a CEMS installed downstream of a wet air pollution control system such that the flue gases are normally or occasionally saturated with water, then the CEMS must have equipment to extract and heat a representative sample of the flue gas for measurement so that the pollutant analyzer portion of the CEMS measures only dry particulate. Heating shall be sufficient to raise the temperature of the extracted flue gas to above the water condensation temperature and shall be maintained at all times and at all points in the sample line from where the flue gas is extracted to and including the pollutant analyzer. Performance of a CEMS design configured in this manner must be documented by the CEMS manufacturer.

6.2 Sampling and Response Time. The CEMS shall sample the stack effluent continuously or intermittently for batch sampling CEMS. Averaging time, the number of measurements in an average, the minimum sampling time, and the averaging procedure for reporting and determining compliance shall conform with those specified in the applicable emission regulation.

6.2.1 Response Time. The response time of the CEMS should not exceed 2 minutes to achieve 95 percent of the final stable value (except for Batch CEMS: see 6.2.2). The response time shall be documented and provided by the CEMS manufacturer. Any changes in the response time following installation shall be documented and maintained by the facility.

6.2.2 Response Time for Batch CEMS. The response time requirement of Section 6.2.1 does not apply to batch CEMS. Instead it is required that the response time, which is the equivalent to the cycle time, be no longer than one tenth of the averaging period for the applicable standard or no longer than fifteen minutes, whichever is greater. In addition, the delay between the end of the sampling time and reporting of the sample analysis shall be no greater than three minutes. Any changes in the response time following installation shall be documented and maintained by the owner or operator.

6.2.3 Sampling Time for Batch CEMS. Sampling is required to be continuous except during brief pauses when the collected pollutant on the capture media is being moved for analysis and the next capture medium starts sampling. In addition, the sampling time should be no less than thirty-five percent of the averaging period for the applicable standard or no less than thirty-five percent of the response time.

6.3 Other equipment and supplies, as needed by the applicable Reference Method(s) (see Section 8.4.2 of this Performance Specification) or as specified by the CEMS manufacturer, may be required.

7.0 Reagents and Standards

7.1 Reference Gases, Optical filters, or other technology-appropriate reference media. As specified by the CEMS manufacturer for internal calibration (i.e., to adjust drift or response) of the CEMS. These need not be certified but shall be documented by the manufacturer to give results consistent with this performance specification.

7.2 Reagents and Standards. May be required as needed by the applicable Reference Method(s) (see Section 8.4.2) of this performance specification).

8.0 Performance Specification Test Procedure

8.1 Installation and Measurement Location Specifications.

8.1.1 CEMS Installation. Install the CEMS at an accessible location downstream of all pollution control equipment where the particulate matter mass concentrations measurements are representative or can be corrected to be representative of the total emissions as determined by the Reference Method from the affected facility or at the measurement location cross section. It is important to select a representative measurement point(s) or path(s) for monitoring in location(s) that the CEMS will pass the calibration test (see Section 8.4). If the cause of failure to meet the calibration relation test is determined to be the measurement location and a satisfactory correction technique cannot be established, the Administrator may require the CEMS to be relocated. Suggested measurement locations and points or paths that are most likely to provide data that will meet the calibration requirements are listed below.

8.1.2 Measurement Location. It is suggested that the measurement location be: (1) at least eight equivalent diameters downstream from the nearest flow disturbance, such as a control device, point of pollutant generation, bend, expansion, contraction in the stack/duct, point of discharge, or other point at which a change of pollutant concentration or gas streamlines may occur; and (2) at least two equivalent

diameter upstream from the effluent exhaust or a flow disturbance.

8.1.2.1 Point CEMS. It is suggested that the measurement point be: (1) no less than 30% of the stack or duct diameter from the stack or duct wall; or (2) within or centrally located over the centroidal area of the stack or duct cross section.

8.1.2.2 Path CEMS. It is suggested that the effective measurement path be : (1) totally within the inner area bounded by a line 30 percent of the stack/duct diameter from the stack or duct wall; (2) have at least 70 percent of the path within the inner 50 percent of the stack or duct cross sectional area; or (3) be centrally located over any part of the centroidal area.

8.1.3 Reference Method Measurement Location and Traverse Points.

8.1.3.1 Select, as appropriate: (1) an accessible Reference Method measurement point at least eight equivalent diameters downstream from the nearest flow disturbance, such as a control device, point of pollutant generation, bend, expansion, contraction in the stack or duct discharge point, or other point at which a change of pollutant concentration or gas flow direction may occur; and (2) at least two equivalent diameters upstream from the flow disturbance, such as the effluent exhaust. When pollutant concentration changes are due solely to diluent leakage (e.g., air heater leakages) and pollutants and diluents are simultaneously measured at the same location, a half diameter may be used in lieu of two equivalent diameters. The CEMS and Reference Method locations need not be the same so long as the Reference Method is placed at a location specified by the method and the CEMS output is representative of pollutant emissions determined by the Reference Method.

8.1.3.2 Select traverse points that assure acquisition of representative samples over the stack or duct cross section. Selection of traverse points to determine the representativeness of the measurement location should be made according to 40 CFR part 60, Appendix A, Method 1, Section 2.2 and 2.3.

8.2 Pretest Preparation. Install the CEMS, prepare the Reference Method test site according to the specifications in Section 8.1, and prepare the CEMS for operation according to the manufacturer's written instructions.

8.3 Calibration Drift Test Procedure.

8.3.1 CD test Period. While the affected facility is operating more than 50 percent of normal load, or as specified in an applicable Subpart, determine the magnitude of the CD once each day (at 24-hour intervals) for 7 consecutive days according to the procedure given in Sections 8.3.2 and 8.3.3.

8.3.2 The purpose of the CD measurement is to verify the ability of the CEMS to conform to the established CEMS calibration used for determining the emission concentration or emission rate. Therefore, if periodic automatic or manual adjustments are made to the CEMS zero and calibration settings, conduct the CD test immediately before these adjustments, or conduct it in such a way that the CD can be determined.

8.3.3 Conduct the CD test at the two points specified in Section 6.1.2. Introduce to the CEMS the reference gases, optical filters, or other suitable calibration reference media (these need not be certified). Record the CEMS response and subtract this value from the reference value.

8.4 Calibration Test Procedure

8.4.1 Calibration Test Period. Conduct the calibration test according to the procedure given in Sections 8.4.2 through 8.4.7 while the affected facility is operating at more than 50 percent of normal load or as specified in an applicable Subpart. The calibration test may be conducted during the CD test period.

8.4.2 Reference Methods. Unless otherwise specified in an applicable Subpart of the regulations, Method 3B, 4, and 5I, or other approved alternatives, are the Reference Methods for diluent (O_2), moisture, and PM, respectively. Method 5 should be used instead of Method 5I if PM emissions exceed 45 mg/dscm (0.02 gr/dscf).

8.4.3 Sampling Strategy for Reference Method tests. Conduct the Reference Method tests in such a way that they will yield results representative of the emissions from the source and can be correlated to the CEMS data. Conduct the diluent (if applicable), moisture, (if needed), and PM measurements simultaneously. In order to correlate the CEMS and Reference Method data properly, make sure the time from the CEMS data recorder and the time instrument used for the Reference Method agree and note the beginning and end of each Reference Method test period of each run (including the exact time of day) on the CEMS chart recordings or other permanent record of output. Make two sample traverses for a total of at least 60 minutes, sampling for an equal time at each traverse point (see Section 8.1.3.2 for discussion of traverse points). The use of paired Method 5I (or Method 5 as appropriate) trains (that is, simultaneously traversing across two 90°-opposed axes) is recommended to improve and assure data quality.

Note: At times, CEMS calibration tests may be conducted during new source performance standards, performance tests or other compliance tests subject to the Clean Air Act or other statutes, such as the Resource Conservation and Recovery Act. In these cases, Reference Method results obtained during CEMS calibration test may be used to determine compliance as long as the source and test conditions are consistent with the applicable regulations.

8.4.4 Number of Runs in a Calibration Relation Test. Conduct a minimum of 15 runs each consisting of simultaneous CEMS and Reference Method measurements sets.

Note: More than 15 sets of CEMS and Reference Method measurement sets may be performed. If this option is chosen, certain test results may be rejected so long as the total number of test results used to determine the calibration relation is greater than or equal to 15. However, all data must be reported, including the rejected data. The basis for rejecting data must be explicitly stated in: (1) The Reference Method, this Performance Specification, or Procedure 2; or (2) the site's QA plan approved by the Administrator.

8.4.5 Structure of Tests. CEMS calibration tests shall be carried out by making simultaneous CEMS and Reference Method measurement sets at three (or more) different levels of PM mass concentrations over the full range of operations experienced by the facility, including emissions. Three (or more) sets of measurements shall be obtained at each level. The different levels of PM mass concentration should be obtained by varying process or PM control device conditions as much as the process allows. If it is not possible or practical to obtain PM measurement at the standard, it is recommended that at least six measurement sets be performed at the maximum PM emission level achievable to produce the most accurate and representative results. This will help obtain the smallest confidence and tolerance intervals at the maximum emission level. Irrespective of the extent of the range, the three PM concentration levels developed in the calibration tests must be distributed over the complete operating range experienced by the facility, and at least three of the minimum 15 measured data points must lie within each of the following levels:

- Level 1: 0 to 30% of the maximum PM concentration;
- Level 2: 30 to 60% of the maximum PM concentration; and
- Level 3: 60 to 100% of the maximum PM concentration.

8.4.6 Correlation of Reference Method and CEMS Data. If necessary, adjust the CEMS outputs and Reference Method test data to the same time. Determine the integrated (arithmetic average) CEMS output over each Reference Method test period. Consider system response time, if important, and confirm that the pair of results are on a consistent moisture, temperature, and diluent concentration basis. Adjust the Reference Method results to ensure they are on the same basis as the CEMS measurements. Depending on the particular CEMS measurement conditions, the CEMS and Method 5I (or Method 5 where applicable) correlations are based on either:

(a) Actual in-stack conditions and actual PM concentrations for in-situ CEMS in mg/acm (*i.e.*, account for the in-stack temperature, pressure, and moisture),

(b) Actual CEMS measurement conditions for extractive CEMS in mg/acm (i.e., account for the elevated temperature of the extracted flue gas if heated), or

(c) Dry standard conditions and corresponding PM concentrations in mg/dscm (i.e., do not correct the Reference Method results if the CEMS outputs are on the same temperature and moisture basis as the Reference Method). Calculate the appropriate PM concentrations as specified by CEMS manufacturer using the applicable equations in Section 12.0.

8.4.7 Calculate the correlation coefficient, confidence interval, and tolerance interval for the complete set of CEMS/RM data according to the procedures in Section 12.0.

8.5 Number of Calibration Tests

Because of the need to develop a calibration curve representative of the facility/APC system, the following strategy will ensure that the calibration curve facilities develop adequately corresponds to measured PM concentrations:

Perform the initial calibration test and develop a correlation within the time period

specified in the applicable regulation. For CEMS with measurement technologies insensitive to changes in PM properties (e.g., Beta-gage), this would be the only calibration test required.

For CEMS with measurement technologies sensitive to PM property changes (*e.g.*, Light-scattering), perform a second calibration within the time period specified in the applicable regulation. Compare the results of the two calibrations to determine what type of mathematical model (*e.g.*, arithmetic, log-normal, or quadratic) best correlates with measured PM concentrations. The calibration for the facility is a composite of both sets of calibration data. Perform a third calibration test within the time period specified in the applicable regulation. Compare the third calibration to the first two. If this calibration relation confirms the findings of the original two calibrations, then this is the last calibration test to be performed. The final calibration relation for the facility is a composite of all three sets of calibration data. If the third calibration shows some fit other than the one originally determined best correlates CEMS response to PM emission concentrations, then a fourth calibration test must be performed within the time period specified in the applicable regulation. This process of performing additional calibration test continues until the facility can determine what fit best correlates CEMS output to PM concentrations. The final calibration is a composite of all calibration data obtained.

8.6 Reporting. At a minimum, (check with the appropriate regional office, State, or Local agency for additional requirements, if any), summarize in tabular form the results of the CD tests and the calibration tests, as appropriate. Include all data sheets, calculations, charts (records of CEMS responses), process data records including PM control equipment operating parameters, and manufacturer's reference calibration media certifications necessary to confirm that the performance of the CEMS met the performance specifications.

9.0 Quality Control. [Reserved]

10.0 Calibration and Standardization. [Reserved]

11.0 Analytical Procedure.

Sample collection and analysis are concurrent for this Performance Specification (see Section 8.0). Refer to the Reference Method for specific analytical procedures.

12.0 Calculations and Data Analysis.

Summarize the results on a data sheet similar to that shown in Table III (in Section 18.0).

12.1 Calibration and Zero Drift

12.1.1 Calibration Drift. Calculate the CD according to:

$$CD = \frac{(R_{CEM} - R_V)}{R_V} \times 100, \qquad (1)$$

where:

CD=the calibration drift of the CEMS in percent

R_{CEM}=the CEMS response; and

R_V=the reference value of the high level calibration standard.

12.1.2 Calculate the ZD according to:

$$ZD = \frac{(R_{CEM} - R_V)}{R_{EM}} \times 100, \qquad (2)$$

where:

ZD=the zero drift of the CEMS in percent.

12.2 Calibration Evaluation

12.2.1 Treatment of Reference Method Data. All data from the Reference Method and CEMS must be on the same basis. Correct the Reference Method data for moisture, temperature, and pressure to the same units as the CEMS using the equations below. Depending on the particular CEMS measurement conditions, the CEMS and Reference Method correlation is based on either:

(a) Actual in-stack conditions and actual PM concentrations for in-situ monitors expressed in mg/acm (i.e., to account for the in-stack temperature and moisture),

(b) Elevated CEMS temperature conditions and corresponding PM concentrations in mg/acm at the analyzer (i.e., to account for the increased temperature, relative to in-stack levels, in extracted sample gas temperature), or

(c) Dry standard conditions and corresponding PM concentrations in mg/dscm (i.e., to account for the moisture condensed in drying the extracted sample before measuring gas volume, analogous to the Reference Method).

Calculate the respective PM concentrations using the equations, below.

Refer to the Results produced from the CFR Method 5, Section 6.9, Equation 5–6; Particulate Concentration Calculation in dry standard units.

$$C_s = (0.001 g/mg)\left(\frac{m_n}{V_{m(std)}}\right) \qquad (4)$$

where:

C_s=Concentration in mg/dscm

m_n=Total amount of particulate matter collected, mg.

$V_{m(std)}$=Volume of gas sample as measured by dry gas meter, corrected to standard condition, dscm.

12.2.2 Conversion of Reference Method Particulate Concentrations to Other Units where:

C=Concentration at actual stack conditions (mg/Acm),

C_s=Concentration at mg/dscm,

C_s@7%=Concentration at mg/dscm at 7% O_2,

t_s=Average stack gas temperature °F,

P=Absolute stack pressure (in Hg),

B_{ws}=Water Vapor in the gas stream, proportion by volume, and

O_2=Stack Gas Oxygen Content.

(a) From dry standard concentration conditions to actual in stack conditions (as applicable).

$$C = (C_s)\frac{528^oR}{(460 + t_s)}\frac{P}{29.92\,inHg}(1 - B_{ws}) \qquad (5)$$

(b) From dry standard concentration conditions to dry standard concentration at 7 %O_2.

$$C_{S@7\%} = C_S\frac{(20.9 - 7)}{20.9 - O_2} \qquad (6)$$

(c) From actual stack conditions to dry standard concentration.

$$C_{S@7\%} = C\frac{(t_s + 460)}{528^oR}\frac{29.92\,inHg}{P}\frac{1}{(1 - B_{ws})} \qquad (7)$$

12.2.3 Linear Calibration. A linear calibration (i.e., linear correlation) shall be calculated from the calibration data by performing a linear least squares regression. The CEMS data appear on the x axis, and the Reference Method data appear on the y axis. Whether this fit is used depends on the outcome of the calculations described in section 12.2.5 of this performance specification.

12.2.3.1 Linear Regression. The linear regression, which gives the predicted mass emission, $\hat{y}$, based on the CEMS response x, is given by the equation:

$$\hat{y} = m \cdot x + b \qquad (7)$$

where:

$$m = \frac{S_{xy}}{S_{xx}} \qquad (8)$$

and

$$b = \bar{y} - m \cdot \bar{x} \qquad (9)$$

The mean values of the x and y data sets are given by

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i, \bar{y} = \frac{1}{n}\sum_{i=1}^{n} y_i \qquad (10)$$

where x_i and y_i are the absolute values of the individual measurements and n is the number of data points. The values S_{xx}, S_{yy}, and S_{xy} are given by

$$S_{xx} = \sum_{i=1}^{n}(x_i - \bar{x})^2, S_{yy} = \sum_{i=1}^{n}(y_i - \bar{y})^2, S_{xy} = \sum_{i=1}^{n}(x_i - \bar{x})\cdot(y_i - \bar{y}) \qquad (11)$$

from which the scatter of y values about the regression line (calibration) s_L can be determined:

$$S_L = \sqrt{\frac{S_{yy}}{n-2}\left(1 - \frac{S_{xy}^2}{S_{xx}\cdot S_{yy}}\right)} \qquad (12)$$

12.2.3.2 Confidence Interval. The two-sided confidence interval, y_c,, for the predicted concentration $\hat{y}$ at point x is given by the equation:

$$y_c = \hat{y} \pm t_f \cdot s_L \sqrt{\frac{1}{n} + \frac{(x - \bar{x})^2}{S_{xx}}}, \text{with } f = n - 2 \qquad (13)$$

12.2.3.3 Tolerance Interval. The two-sided tolerance interval y_t for the regression line is given by the equation:

$$y_T = \hat{y} \pm k_T \cdot s_L \qquad (14)$$

at the point x with $k_T = u_n'$ and $f = n - 2$, where

$$n' = \frac{n}{1 + \frac{n \cdot (x - \bar{x})^2}{S_{xx}}}, n' \geq 2. \qquad (15)$$

The tolerance factor u_n• for 75% of the population is given in Table I as a function of n′. The factor v_f as a function of f is also given in Table I as well as the t-factor at the 95% confidence level.

12.2.3.4 Correlation Coefficient. The correlation coefficient r may be calculated from

$$r = m\sqrt{\frac{S_{xx}}{S_{yy}}}. \qquad (16)$$

12.2.4 Quadratic Calibration Relation. In some cases, a quadratic regression will provide a better fit to the calibration data than a linear regression. The CEMS data appear on the x axis, and the Reference Method data appear on the y axis. A test to determine whether the quadratic regression gives a better fit to the data than a linear regression must be performed. The relation with the best fit must be used.

12.2.4.1 Quadratic Regression. A least-squares quadratic regression gives the best fit coefficients b_0, b_1, and b_2 for the calibration relation:

$$\hat{y} = b_0 + b_1 x + b_2 x^2 \qquad (17)$$

The coefficients b_0, b_1, and b_2 are determined from the solution to the matrix equation Ab=B where:

$$A = \begin{bmatrix} n & S_1 & S_2 \\ S_1 & S_2 & S_3 \\ S_2 & S_3 & S_4 \end{bmatrix}, \qquad b = \begin{bmatrix} b_0 \\ b_1 \\ b_2 \end{bmatrix}, \qquad B = \begin{bmatrix} S_5 \\ S_6 \\ S_7 \end{bmatrix}.$$

and

$$S_1 = \sum_{i=1}^{n}(x_i),\ S_2 = \sum_{i=1}^{n}\left(x_i^2\right),\ S_3 = \sum_{i=1}^{n}\left(x_i^3\right),\ S_4 = \sum_{i=1}^{n}\left(x_i^4\right), \qquad (18)$$

$$S_5 = \sum_{i=1}^{n} y_i,\ S_6 = \sum_{i=1}^{n}(x_i y_i),\ S_7 = \sum_{i=1}^{n}\left(x_i^2 y_i\right).$$

The solutions to b_0, b_1, and b_2 are:

$$b_0 = \left(S_5 \cdot S_2 \cdot S_4 + S_1 \cdot S_3 \cdot S_7 + S_2 \cdot S_6 \cdot S_3 - S_7 \cdot S_2 \cdot S_2 - S_3 \cdot S_3 \cdot S_5 - S_4 \cdot S_6 \cdot S_1\right)/\det A \qquad (19)$$

$$b_1 = \left(n \cdot S_6 \cdot S_4 + S_5 \cdot S_3 \cdot S_2 + S_2 \cdot S_1 \cdot S_7 - S_2 \cdot S_6 \cdot S_2 - S_7 \cdot S_3 \cdot n - S_4 \cdot S_1 \cdot S_5\right)/\det A \qquad (20)$$

$$b_2 = \left(n \cdot S_2 \cdot S_7 + S_1 \cdot S_6 \cdot S_2 + S_5 \cdot S_1 \cdot S_3 - S_2 \cdot S_2 \cdot S_5 - S_3 \cdot S_6 \cdot n - S_7 \cdot S_1 \cdot S_1\right)/\det A \qquad (21)$$

where:

$$\det A = n \cdot S_2 \cdot S_4 + S_1 \cdot S_3 \cdot S_2 + S_2 \cdot S_1 \cdot S_3 - S_2 \cdot S_2 \cdot S_2 - S_3 \cdot S_3 \cdot S_2 - S_4 \cdot S_1 \cdot S_1 \qquad (22)$$

12.2.4.2 Confidence Interval. For any positive value of x, the confidence interval is given by:

$$y_{CI} = \hat{y} \pm t_f \cdot s_Q \sqrt{\Delta} \qquad (23)$$

where:

$f = n - 3$,

t_f is given in Table I,

$\bar{(}$ (24)

C (25)

The *C* coefficients are given below:

$$C_0 = \left(S_2 \cdot S_4 - S_3^2\right)/D,\ C_1 = \left(S_3 \cdot S_2 - S_1 \cdot S_4\right)/D,\ C_2 = \left(S_1 \cdot S_3 - S_2^2\right)/D,$$
$$C_3 = \left(nS_4 - S_2^2\right)/D,\ C_4 = \left(S_1 \cdot S_2 - nS_3\right)/D,\ C_5 = \left(nS_2 - S_1^2\right)/D. \qquad (26)$$

where

$$D = n\left(S_2 \cdot S_4 - S_3^2\right) + S_1\left(S_3 \cdot S_2 - S_1 \cdot S_4\right) + S_2\left(S_1 \cdot S_3 - S_2^2\right). \qquad (27)$$

12.2.4.3 Tolerance Interval. For any positive value of x, the tolerance interval is given by:

$$y_{TI} = \hat{y} \pm k_T \cdot s_Q, \qquad (28)$$

where:

$$k_T = u_{n'} \cdot v_f \text{ with } f = n\text{-}3, \text{ and} \qquad (29)$$

$$n' = 1/\Delta \text{ with } n' \geq 2. \qquad (30)$$

The v_f and u_n' factors can also be found in Table I.

12.2.5 Test to Determine Best Regression Fit. The test to determine if the fit using a quadratic regression is better than the fit using a linear regression is based on the values of *s* calculated in the two formulations. If s_L denotes the value of *s* from the linear regression and s_Q the value of *s* from the quadratic regression, then the quadratic regression gives a better fit at the 95% confidence level if the following relationship is fulfilled:

$$\frac{(n-2)\cdot s_L^2 - (n-3)\cdot s_Q^2}{s_Q^2} > F_f \qquad (31)$$

with $f = n$-3 and the value of F_f at the 95% confidence level as a function of *f* taken from Table II below.

12.2.6 Alternative Mathematical Approaches to the Calibration. Other non-linear relations may provide a better fit to the calibration data than linear or quadratic relations because of the monitor's response to some measurable property indicative of the PM concentration. These approaches may serve as alternative approaches for defining the mathematical relation between the CEMS response and the Reference Method. The basis for developing such alternative approaches must be explicitly included in the calibration relation test report with supporting data demonstrating a better fit than linear and quadratic relations and is subject to approval by the Administrator.

13.0 Method Performance

13.1 Calibration Drift Performance Specification. The CEMS internal calibration must not drift or deviate from the value of the reference light, optical filter, Beta attenuation signal, or other technology-suitable calibration reference media by more than 2 percent of the span value. If the CEMS includes diluent and/or auxiliary monitors (for temperature, pressure, and/or moisture) that are employed as a necessary part of this performance specification, the CD must then be determined separately for each in terms of its respective output (see the appropriate Performance Specification for the diluent CEMS specification). None of the CDS may exceed the specification.

13.2 Calibration Relation Performance Specifications. The CEMS calibration relation must meet each of the following minimum specifications for all three criteria.

Criterion A. The correlation coefficient shall be greater than or equal to 0.90.

Criterion B. The confidence interval (95%) at the emission limit shall be within 10% of the emission limit value specified in the regulations.

Criterion C. The tolerance interval at the emission limit shall have 95% confidence that 75% of all possible values are within 25% of the emission limit value specified in the regulations.

13.3 PM Compliance Monitoring. The CEMS measurements shall be reported to the Agency in the units of the standard expressed in the regulations (*i.e.*, mg/dscm,

14.0 Pollution Prevention. [Reserved]

15.0 Waste Management. [Reserved]

16.0 Alternative Procedures. [Reserved]

17.0 References

1. 40 CFR part 60, Appendix B, ''Performance Specification 2—Specifications and Test Procedures for SO_2 and NO_x, Continuous Emission Monitoring Systems in Stationary Sources.''

2. 40 CFR part 60, Appendix B, ''Performance Specification I—Specification and Test Procedures for Opacity Continuous Emission Monitoring Systems in Stationary Sources.

3. 40 CFR part 60, Appendix A, ''Method 1—Sample and Velocity Traverses for Stationary Sources.''

4. 40 CFR part 266, Appendix IX, Section 2, ''Performance Specifications for Continuous Emission Monitoring Systems.''

5. ISO 10155, ''Stationary Source Emissions—Automated Monitoring of Mass Concentrations of Particles: Performance Characteristics, Test Procedures, and Specifications,'' dated 1995, American National Standards Institute, New York City.

6. G. Box, W. Hunter, J. Hunter, *Statistics for Experimenters* (Wiley, New York, 1978).

7. M. Spiegel, *Mathematical Handbook of Formulas and Tables* (McGraw-Hill, New York, 1968).

18.0 Reference Tables, Example Calculations, Diagrams, Flowcharts, and Validation Data.

18.1 Reference Tables

TABLE I: FACTORS FOR CALCULATION OF CONFIDENCE AND TOLERANCE INTERVALS

f	t_{n-2}	v_{n-2}	n'	u_n'(75)
7	2.365	1.7972	7	1.233

TABLE I: FACTORS FOR CALCULATION OF CONFIDENCE AND TOLERANCE INTERVALS—Continued

f	t_{n-2}	v_{n-2}	n'	$u_n'(75)$
8	2.306	1.7110	8	1.223
9	2.262	1.6452	9	1.214
10	2.228	1.5931	10	1.208
11	2.201	1.5506	11	1.203
12	2.179	1.5153	12	1.199
13	2.160	1.4854	13	1.195
14	2.145	1.4597	14	1.192
15	2.131	1.4373	15	1.189
16	2.120	1.4176	16	1.187
17	2.110	1.4001	17	1.185
18	2.101	1.3845	18	1.183
19	2.093	1.3704	19	1.181
20	2.086	1.3576	20	1.179
21	2.080	1.3460	21	1.178
22	2.074	1.3353	22	1.177
23	2.069	1.3255	23	1.175
24	2.064	1.3165	24	1.174
25	2.060	1.3081	25	1.173
30	2.042	1.2737	30	1.170
35	2.030	1.2482	35	1.167
40	2.021	1.2284	40	1.165
45	2.014	1.2125	45	1.163
50	2.009	1.1993	50	1.162

TABLE II: VALUES FOR F_f.

f	F_f	*f*	F_f
1	161.4	16	4.49
2	18.51	17	4.45
3	10.13	18	4.41
4	7.71	19	4.38
5	6.61	20	4.35
6	5.99	22	4.30
7	5.59	24	4.26
8	5.32	26	4.23
9	5.12	28	4.20
10	4.96	30	4.17
11	4.84	40	4.08
12	4.75	50	4.03
13	4.67	60	4.00
14	4.60	80	3.96
15	4.54	100	3.94

TABLE III: FIELD TEST DATA FOR CALIBRATION

Run No. (mg/Acm)	Date	CEMS PM response (arbitrary units)	M 5 Conc. (mg/dscm)	ave Ts (°F)	Bws	Abs P (in Hg)	O_2	M5 Conc
1								
2								
3								
4								
5								
6								

18.2 Example Calculations

18.2.1 Method 5 concentrations conversions

Example (a): CEMS measurement conditions were made at actual stack conditions, requiring that the Method 5 concentration must be converted from dry standard to actual stack conditions.

where:

C= Concentration at actual stack conditions (mg/Acm): is unknown

C_s= 38.66 mg/dscm

t_s= 291.7°F

P = 30.13 in Hg

O_2=Assumed to be 11.63% O_2

B_{ws}= .226

$$C = (38.66\,\text{mg/dscm})\frac{528°\,R}{(460+291.7°\,F)}\frac{30.13\,\text{inHg}}{29.92\,\text{inHg}}(1-.226)$$

C = 21.17 mg/Acm

Example (b) CEMS measurement conditions were made at the dry standard condition. Convert the concentration to units of the emission regulation (dry standard conditions at 7% O_2).

where:

$C_{s@7}$%= Concentration at standard conditions @ 7% O_2; is unknown

O_2=Assumed to be 11.63% O_2

$$C_{s@7\%} = 38.66\,\text{mg/dscm}\frac{(20.9-7)}{(20.9-O_2)}$$

$C_{s@7}$%=57.97 mg/dscm @ 7% O_2

Example (c): The emission regulation (dry standard conditions at 7% O_2) must be converted to actual stack conditions.

Using the Proposed Emission Limit: 50 mg/dscm @ 7% O_2

where:

$C_{s@7}$%= 50 mg/dscm @ 7% O_2

t_s = 291.4°F, average temperature during initial calibration

B_{ws} = .201, average moisture during initial calibration

P = 30.08, average absolute stack pressure during initial calibration

$$C_{@7\%} = \left(C_{s@7\%}\right)\frac{528°\,R}{(460+291.4)}\frac{30.08}{29.92\,\text{inHg}}(1-.201)$$

O_2=Assumed to be 11.63% O_2

$C_{@7}$%= 28.22 mg/Acm 7% O_2

$$C = 28.22\,\text{mg/Acm@7\%}\frac{20.9-O_2}{(20.9-7)}$$

C=18.82 mg/Acm

Example (d) The following table is the data set of a representative monitor and its initial calibration. These CEMS measurement conditions are at actual stack conditions. X is the CEMS arbitrary unit measurements and Y is the corresponding Method 5 concentration at actual stack conditions.

Run	x	y
1	18.48	10.93
2	21.85	11.19
3	27.10	13.80
4	31.54	16.70
5	32.33	16.61
6	8.35	2.64
7	15.83	6.65
8	11.95	6.01
9	8.43	3.02
10	9.59	4.15
11	13.81	7.31
12	21.48	11.93
13	27.64	11.27
14	7.08	3.11
15	6.15	2.21
16	8.92	5.50
17	8.77	3.59
18	17.10	6.96
19	13.58	5.33
20	14.14	6.70
21	15.28	6.59
22	13.92	7.00
23	14.00	6.52
24	15.09	4.76
25	17.43	9.78
26	21.63	10.22
27	18.56	10.83
28	48.53	18.81
29	82.25	29.01
30	83.04	28.88
31	21.20	8.98
32	60.00	22.38
33	32.08	15.94
34	43.05	20.19
35	30.51	13.77
36	12.45	3.84

where:

Sxx = 12338.81

Syy = 1690.99

Sxy = 4410.24

x__ave = 23.699

y__ave = 10.365

S_L = 1.836

$$\hat{y} = 0.357\cdot x + 1.894$$

From equations 7,8, and 9, the line regression is

Correlation coefficient

From equation 16, the correlation coefficient is 0.966

Confidence interval

Using the Proposed Emission Limit: 50 mg/dscm @ 7% O_2 converted to actual conditions in example (c) C=18.82 mg/Acm. Calculate CEMS response (x) using line regression calculated above.

where:

t_f = 2.032

$$y_c = \hat{y} \pm t_f \cdot s_L \sqrt{\frac{1}{n} + \frac{(x-\bar{x})^2}{S_{xx}}}, \text{ with } f = n-2$$

=18.82 mg/Acm±1.0
Tolerance interval

where:

n' = 13
v_f = 1.253
k_T = 1.498

$$y_T = \hat{y} \pm k_T \cdot s_L$$

18.3 Diagrams [Reserved]
Y_T=18.82 mg/Acm±2.75
18.4 Flowcharts [Reserved]
18.5 Validation Data [Reserved]

Appendix III—Procedure 2

Procedure 2. Quality Assurance Requirements for Particulate Matter Continuous Emission Monitoring Systems Used for Compliance Determination

1. Applicability and Principal

1.1 Applicability. Procedure 2 is used to evaluate the effectiveness of quality control (QC) and quality assurance (QA) procedures and the quality of data produced by any particulate matter (PM) continuous emission monitoring system (CEMS) that is used for determining compliance with the emission standards on a continuous basis as specified in the applicable regulation. The CEMS may include diluent (e.g., O_2) monitors and other auxiliary monitoring equipment for measurement, determination, or input of the gas temperature, pressure, moisture content, or sample volume .

This procedure specifies the minimum QA requirements necessary for the control and assessment of the quality of CEMS data submitted to the Environmental Protection Agency (EPA). Source owners and operators responsible for one or more CEMS's used for compliance monitoring must meet these minimum requirements and are encouraged to develop and implement a more extensive QA program or to continue such programs where they already exist.

Data collected as a result of QA and QC measures required in this procedure are to be submitted to the Agency. These data are to be used by both the Agency and the CEMS operator in assessing the effectiveness of the CEMS QC and QA procedures in the maintenance of acceptable CEMS operation and valid emission data.

Appendix F, Procedure 2 applicability and the CEMS accuracy assessments are determined by individual regulations.

1.2 Principal. The QA procedure consist of two distinct and equally important functions. One function is the assessment of the quality of the CEMS data by estimating accuracy. The other function is the control and improvement of the quality of the CEMS data by implementing QC policies and corrective actions. These two functions form a control loop: When the assessment function indicates that the data quality is inadequate, the control effort must be increased until the data quality is acceptable. In order to provide uniformity in the assessment and reporting of data quality, this procedure explicitly specifies the assessment methods for response drift and accuracy. The methods are based on procedures included in the applicable performance specifications (PS's) in general, and are specifically applicable to PS 11, in appendix B of 40 CFR part 60. Procedure 2 also requires CEMS measurements of samples concurrent with reference method (RM) measurements.

Because the control and corrective action function encompasses a variety of policies, specifications, standards, and corrective measures, this procedure treats QC requirements in general terms to allow each source owner or operator to develop a QC system that is most effective and efficient for the circumstances.

2. Definitions

2.1 Continuous Emissions Monitoring System means the total equipment required for the determination of a particulate matter mass concentration in units of the emission standard. The sample interface, pollutant analyzer, diluent analyzer, other auxiliary data monitor(s) and data recorder are the major subsystems of the CEMS.

2.2 Calibration Drift (CD) means the difference in the CEMS output readings from the established reference value after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

2.3 Calibration relation means the relationship between a CEMS response and measured PM concentrations by the reference method which is defined by a mathematical equation.

2.4 Calibration Standard means a reference material that produces a known and unchanging response when presented to the pollutant analyzer portion of the CEMS, and used to calibrate the drift or response of the analyzer.

2.5 Flagged data means data marked by the CEMS indicating that the response value is suspect or invalid.

2.6 Span Value means the upper limit of the CEMS measurement range. The span value shall be documented by the CEMS manufacturer with laboratory data.

2.7 Zero Drift (ZD) means the difference in the CEMS output readings for zero input after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

3. QC Requirements

Each source owner or operator must develop and implement a QC program. As a minimum, each QC program must include written procedures which should describe in detail, complete, step-by-step procedures and operations for each of the following activities:

1. Internal-Calibration of CEMS relative to assessing CD.
2. CD determination and adjustment of CEMS.
3. Preventative maintenance of CEMS (including spare parts inventory and sampling probe integrity).
4. Data recording, calculations, and reporting.
5. Accuracy audit procedures including sampling and analysis methods, sampling strategy, and structuring test conditions over the prescribed range of PM concentrations.
6. Program of corrective action for malfunctioning CEMS, including flagged data periods.

As described in Section 5.2, whenever excessive inaccuracies occur, the source owner or operator must revise the current written procedures or modify or replace the CEMS to correct the deficiency causing the excessive inaccuracies.

These written procedures must be kept on record and available for inspection by the enforcement agency.

4. CD Assessment

4.1 CD Requirement. As described in 40 CFR 60.13(d), source owners and operators of CEMS must check, record, and quantify the CD at two concentration values at least daily (approximately 24 hours) in accordance with the method prescribed by the manufacturer. The CEMS calibration must, as minimum, be adjusted whenever the daily zero drift or the daily span value exceeds two times the limits of PS 11 in appendix B of this regulation.

4.2 Recording Requirement for Automatic CD Adjusting Monitors. Monitors that automatically adjust the instrument responses to the corrected calibration values (e.g., microprocessor control) must be programmed to record the unadjusted concentration measured in the CD prior to resetting the calibration, if performed, or record the amount of adjustment.

4.3 Criteria for Excessive CD. If either the zero drift or the daily span value exceeds twice the PS 11 drift specification for five, consecutive, daily periods, the CEMS is out-of-control. If either the zero drift or the daily span value exceeds four times the PS 11 drift specification during any CD check, the CEMS is out-of-control. If the CEMS is out-of-control, take necessary corrective action. Following corrective action, repeat the CD checks.

4.3.1 Out-Of-Control Period Definition. The beginning of the out-of-control period is the time corresponding to the completion of the fifth, consecutive, daily CD check with a CD in excess of two times the allowable limit, or the time corresponding to the completion of the daily CD check that results in a CD in excess of four times the allowable limit. The end of the out-of-control period is the time corresponding to the completion of the CD check following corrective action that results in the CD's at both the zero or the daily span value points being within the corresponding allowable CD limit (i.e., either two times or four times the allowable limit in appendix B).

4.3.2 CEMS Data Status During Out-Of-Control Period. During the period the CEMS is out-of-control, the CEMS data may not be used in calculating emission compliance nor be counted towards meeting minimum data availability as required and described in the applicable subpart [e.g., 60.47a(f)].

4.4 Data Recording and Reporting. As required in 60.7(d) of this regulation (40 CFR part 60), all measurements from the CEMS must be retained on file by the source owner for at least 2 years. However emission data obtained on each successive day while the CEMS is out-of-control may not be included as part of the minimum daily requirement of the applicable subpart [e.g., 60.47a(f)] nor be used in the calculation of reported emissions for that period.

5. Data Accuracy Assessment

5.1 Auditing Requirements. Each CEMS must be audited at least once each calender quarter. Successive quarterly audits shall occur no closer than 2 months. The audits shall be conducted as follows:

5.1.1 Response Calibration Audit (RCA). The RCA must be conducted at the frequency specified in the applicable regulation. Conduct the RCA test according to the sampling strategy described in Section 8.4.3 and according to the structure of test described in Section 8.4.5, both of which are in PS 11 in appendix B, except that the minimum of runs required shall be 12 in the RCA instead of 15 as specified in PS 11. If it is not possible/practical to obtain three measured data points in all three PM concentration ranges as specified in Section 8.4.5 of PS 11, a minimum of three measured data points in any of the two ranges specified in Section 8.4.5 is acceptable, as long as at least all 12 data points lie within the range of the calibration relation test.

5.1.2 Absolute Calibration Audit (ACA). If applicable, an ACA shall be conducted each quarter except in the quarters when a RCA is conducted.

To conduct an ACA: (1) Challenge the CEMS with an audit standard or an equivalent audit reference to reproduce the monitor's measurement at three points within the following ranges:

Audit point	Audit range
1	0 to 20% of span value.
2	40 to 60% of span value and.
3	80 to 100% of span value.

Challenge the CEMS three times at each audit point, and use the average of the three responses in determining accuracy.

Use a separate audit standard or an equivalent audit reference for audit points 1, 2, and 3.

The monitor should be challenged at each audit point for a sufficient period of time to assure that the CEMS response has stabilized.

(2) Operate each monitor in the mode, manner and range specified by the manufacturer.

(3) Use only audit standards or equivalent audit references specified and provided by the manufacturer. Store, maintain, and use audit standards or equivalent audit references as specified by the manufacturer. When National Institute of Standards and Testing (NIST)-traceable audit standards become available for PM CEMS, their use will be required.

The difference between the actual known value of the audit standard or equivalent audit reference specified by the manufacturer and the response of the monitor is used to assess the accuracy of the CEMS.

5.1.3 Relative Accuracy Audit (RAA) [Reserved].

5.1.4 Sample Volume Audit (SVA). For applicable units with a sampling system, an audit of the equipment to determine sample volume (e.g., equipment measuring sampling flowrate for a known time) must be performed once a year. The SVA procedure specified by the manufacturer will be followed to assure that sample volume is accurately measured across the normal range of sample volumes made over the past year.

5.1.5 Other Alternative Audits. Other alternative audit procedures may be used as approved by the Administrator for the quarters when ACAs are to be conducted.

5.2 Excessive Audit Inaccuracy. If the audit results using the RCA, ACA, RAA, or SVA, do not meet the criteria in Section 5.2.3, the CEMS is out-of-control. If the CEMS is out-of-control, take necessary corrective action to eliminate the problem. Following corrective action, the source owner or operator must audit the CEMS with a calibration relation test, ACA, RAA, or SVA to determine if the CEMS is operating within the specifications. A calibration relation test must always be used following an out-of-control period resulting from a RCA. If audit results show the CEMS to be out-of-control, the CEMS operator shall report both the audit showing the CEMS to be out-of-control and the results of the audit following corrective action showing the CEMS to be operating within specifications.

5.2.1 Out-Of-Control Period Definitions. The beginning of the out-of-control period is the time corresponding to the completion of an unsuccessful RCA, ACA, RAA, or SVA. The end of the out-of-control period is the time corresponding to the completion of the subsequent successful calibration test or audit.

5.2.2 CEMS Data Status During Out-Of-Control Period. During the period the monitor is out-of-control, the CEMS data may not be used in calculating emission compliance nor be counted towards meeting minimum data availability as required and described in the applicable subpart.

5.2.3 Criteria for Excessive Audit Inaccuracy. Unless specified otherwise in the applicable subpart, the criteria for excessive inaccuracy are:

(1) For the RCA, at least 75% of a minimum number of 12 sets of CEMS/reference method measurements from the test must fall within a specified area on a graph developed by the calibration relation regression line over the calibration range and the tolerance interval set at +/-25% of the emission limit. The specified area on a graph is (a) bounded by two lines parallel with the calibration regression line, and offset at a distance +/-25% of the numerical emission limit from the calibration regression line on the y-axis, and (b) traversing across the calibration range bounded by the lowest and the highest CEMS reading of the calibration test on the x-axis.

(2) For the ACA, +/-15 percent of the average audit value or 7.5% of the applicable standard, whichever is greater.

(3) For the SVA, +/-5 percent of the average sample volume audit value .

5.3 Criteria For Acceptable QC Procedure. Repeated excessive inaccuracies (i.e., out-of-control conditions resulting from the quarterly audits) indicates the QC procedures are inadequate or that the CEMS is incapable of providing quality data. Therefore, whenever excessive inaccuracies occur for two consecutive quarters, the source owner or operator must revise the QC procedures (see Section 3) or modify or replace the CEMS.

6. Calculations for CEMS Data Accuracy and Acceptability Determination

6.1 RCA Calculations and Determination of Acceptability.

6.1.1 RCA Calculations. Follow the equations described in Section 12 of appendix B, PS 11 to calculate results from the RCA tests. The reference method results from the RCA must be calculated in units consistent with the CEMS measurement approach in use (e.g., mg/m^3 or mg/dscm).

6.1.2 Acceptability Determination of RCA Data. Plot each of the CEMS/reference method data from the RCA test on a figure based on the calibration relation regression line to determine if the appropriate criterion in Section 5.2.3 (1) is met.

6.2 ACA Accuracy Calculation. Use Equations 1 and 2 to calculate results from the ACA tests.

$$A = \frac{(R_{CEM} - R_V)}{R_V} \times 100, \qquad (1\text{-}1)$$

where:

A = Accuracy of the CEMS, percent.

R_{CEM} = Average CEMS response during audit.

R_V = Reference value of the audit calibration standard or the equivalent audit.

$$A = \frac{(R_{CEM} - R_V)}{R_{EM}} \times 100, \qquad (1\text{-}2)$$

where:

A = Accuracy of the CEMS, percent.

R_{CEM} = Average CEMS response.

R_V = Reference value of the audit calibration standard or the equivalent audit.

R_{EM} = the emission limit value.

6.3 SVA Accuracy Calculation. The appropriate SVA calculations will be provided by the CEMS manufacturer.

6.4 Treatment of Flagged Data. All flagged CEMS data are considered invalid; as such, these data may not be used in determining compliance nor be counted towards meeting minimum data availability as required and described in the applicable subpart.

6.5 Alternative Calibration Relation Approaches. Certain PM CEMS have technologies established on principles measuring PM concentration directly, whereas other technologies measure PM properties indirectly indicative of PM concentration. It has been shown empirically that a linear relationship can exist between these properties and PM concentration over a narrow range of concentrations, provided all variables remain essentially constant. However, if all variables affecting this relationship do not remain constant, then a linear relationship will probably not occur. Such is the case expected for facilities with PM emissions over a wide range of PM concentrations with certain process and air pollution control configurations. Other non-linear relations may provide a better fit to the calibration data than linear relations because the monitor's response is based on some measurable, and changing, property of the PM concentrations. These non-linear

approaches may serve as improved approaches for defining the mathematical relation between the CEMS response and reference method measured PM concentrations. The basis and advantage for developing and implementing such alternative approaches for determining compliance must be explicitly included in the calibration relation test report with supporting data demonstrating a better fit than a linear relation. Use of these alternative approaches is subject to approval by the Administrator.

6.6 Example Accuracy Calculation. Example calculations and illustration for the RCA are available in Citation 1. Example calculations for the ACA are available in Citation 3 of Appendix F—Procedure 1 and will be available in Citation 2.

7. Reporting Requirements

At the reporting interval specified in the applicable regulation, report for each CEMS the accuracy results from Section 6 and the CD assessment results from Section 4. Report the drift and accuracy information as a Data Assessment Report (DAR), and include one copy of this DAR for each quarterly audit with the report of emissions required under the applicable subparts of this part.

As a minimum, the DAR must contain the following information:

1. Source owner or operator name and address
2. Identification and location of monitors in the CEMS.
3. Manufacturer and model number of each monitor in the CEMS.
4. Assessment of CEMS data accuracy/acceptability and date of assessment as determined by a RCA, ACA, RAA, or SVA described in Section 5 including the acceptability determination for the RCA, the A for the ACA or RAA or SVA, the RM results, the calibration audit standards or equivalent audit references, the CEMS responses, and the calculation results as defined in Section 6. If the accuracy audit results show the CEMS to be out-of-control, the CEMS operator shall report both the audit results showing the CEMS to be out-of-control and the results of the audit following corrective action showing the CEMS to be operating within specifications.
5. Summary of all corrective actions taken when CEMS was determined out-of-control, as described in Sections 4 and 5.

An example of a DAR format will be shown later in Figure 1.

8. Bibliography

To Be Determined

Figure 1—Example Format For Data Assessment Report: To Be Determined

[FR Doc. 97–33740 Filed 12–29–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 85 and 89

[AMS—FRL–5939–6]

Control of Air Pollution: Emission Standards for New Nonroad Compression-Ignition Engines at or Above 37 Kilowatts; Preemption of State Regulation for Nonroad Engine and Vehicle Standards; Amendments to Rules

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: Today's action, consistent with an order and opinion from the U.S. Court of Appeals for the District of Columbia Circuit, proposes amendments to EPA's regulations setting emission standards for large (at or above 37 kilowatts) nonroad compression ignition engines and to EPA's regulations defining the scope of preemption of state and local nonroad emission standards and establishing procedures for EPA authorization of California nonroad emission standards. Specifically, EPA proposes to withdraw portions of an interpretive rule which set forth the Agency's position on the Clean Air Act regarding the status of certain internal combustion engines manufactured before the effective date of the final rulemaking promulgating EPA's definition of nonroad engine. Additionally, consistent with the DC Circuit opinion, EPA also is amending the remaining text of this interpretive rule, as well as EPA's regulations issued under section 209(e) of the Act regarding the Agency's California nonroad standards authorization process, to clarify that California must seek authorization from EPA prior to enforcing standards and other requirements relating to emissions from any nonroad vehicles or engines, and not just new nonroad vehicles and engines, which was the original language used in these regulations.

In the final rule section of today's **Federal Register**, EPA is issuing these amendments as a direct final rule without prior proposal, because EPA views the action as noncontroversial and anticipates no adverse comments. A detailed rationale for the amendments and for the decision to issue them as a direct final rule is set forth in the Preamble to the direct final rules. If no adverse comments are received in response to the 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. Additionally, EPA will hold a public hearing on this proposed rule if one is requested.

DATES: Any party who wishes to submit comments must do so by March 2, 1998 unless a hearing is requested. Any party can request EPA to hold a public hearing on this action, but such request must be received by January 29, 1998. If a hearing is requested, it will take place on March 2, 1998, and interested parties will have an additional 30 days after the hearing (until March 30, 1998) to submit comments on any information presented at the hearing. Because no hearing will occur absent a request for one, interested parties should contact Robert M. Doyle at the number listed below after January 29, 1998 to determine whether a hearing will take place.

ADDRESSES: Written comments should be submitted (in duplicate if possible) to: Air Docket Section (6102), Attention: Docket No. A–91–24, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or hand-delivered to the Air Docket at the above address, in Room M–1500, Waterside Mall. A copy of written comments should also be submitted to Robert M. Doyle at the address below.

FOR FURTHER INFORMATION CONTACT: Robert M. Doyle, Attorney/Advisor, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M. Street, SW, Washington, DC 20560, (202) 564–9258, FAX (202) 233–9596, E-Mail, Doyle.Robert@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION: For additional information, please see the direct final rule published in the rules section of today's **Federal Register**.

List of Subjects

40 CFR Part 85

Environmental protection, Administrative practice and procedure, Air pollution control, Federal preemption, Motor vehicle pollution, Nonroad engine and vehicle pollution, Reporting and recordkeeping requirements, State controls.

40 CFR Part 89

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Incorporation by reference, Labeling, Nonroad source pollution, Reporting and recordkeeping requirements.

Dated: December 17, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 97–33768 Filed 12–29–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7234]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Arkansas	Pulaski County (Unincorporated Areas).	Bringle Creek	Approximately 500 feet upstream of confluence with Maumelle River.	None	*300
			At confluence with Bringle Creek Tributary A.	None	*345
		Bringle Creek Tributary A	At confluence with Bringle Creek	None	*345
			Approximately 1,600 feet above confluence with Bringle Creek.	None	*364
		Ferndale Creek	At confluence with Maumelle River	*368	*368
			Approximately 200 feet upstream of Ferndale Road.	None	*368
			Just upstream of Ferncliff Road	None	*442

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at 501 West Markham, Little Rock, Arkansas.					
Send comments to The Honorable Floyd G. Villines, Pulaski County Judge, County Courthouse, 201 South Broadway, Little Rock, Arkansas 72201.					
California	Agoura Hills (City) Los Angeles County.	Medea Creek	Approximately 975 feet upstream of Canwood Street.	*859	*859
			Approximately 1,105 feet upstream of Canwood Street.	*859	*860
			Approximately 750 feet upstream of Fountainwood Street.	None	*947
Maps are available for inspection at the City of Agoura Hills Planning Department, City Hall, 30101 Agoura Court, Agoura Hills, California.					
Send comments to The Honorable Fran Pavley, Mayor, City of Agoura Hills, 30101 Agoura Court, Suite 102, Agoura Hills, California 91301.					
	Colusa (City) Colusa County.	Colusa Trough	Approximately 600 feet downstream of State Highway 20.	None	*50
			Approximately 4,000 feet downstream of State Highway 20.	None	*50
Maps are available for inspection at the City of Colusa Planning Department, 425 Webster Street, Colusa, California.					
Send comments to The Honorable John Hicks, Mayor, City of Colusa, P.O. Box 1063, Colusa, California 95932.					
	Colusa County (Unincorporated Areas).	Colusa Trough	At State Highway 20	None	*50
			Approximately 10,850 feet upstream of Lurline Road.	None	*55
Maps are available for inspection at the Colusa County Department of Planning and Building, 220 12th Street, Colusa, California.					
Send comments to The Honorable William R. Waite, Chairperson, Colusa County Board of Supervisors, 546 Jay Street, Colusa, California 95932.					
Hawaii	Maui County	Pacific Ocean	At intersection of Front and Baker Streets	*7	*7
			At intersection of Front and Shaw Streets	*7	*6
			Approximately 3,300 feet south of confluence with Kauaula Stream.	*9	*9
Maps are available for inspection at the Maui County Planning Department, 250 South High Street, Wailuku, Hawaii.					
Send comments to The Honorable Linda Crockett Lingle, Mayor, Maui County, 200 South High Street, Wailuku, Hawaii 96793.					
Idaho	Bellevue (City) Blaine County.	Quigley Creek	At intersection of Third and Cedar Streets	None	*5,187
			Approximately 380 feet upstream of Spruce Street.	None	*5,199
Maps are available for inspection at the Building Inspector's Office, City Hall, 117 Pine Street, Bellevue, Idaho.					
Send comments to The Honorable Monte Brothwell, Mayor, City of Bellevue, P.O. Box 449, Bellevue, Idaho 83313.					
	Blaine County (Unincorporated Areas).	Quigley Creek	At intersection of Third and Cedar Streets	None	*5,187
			Approximately 380 feet upstream of Spruce Street.	None	*5,199
Maps are available for inspection at the Blaine County Planning and Zoning Department, Blaine County Courthouse, 206 First Avenue South, Hailey, Idaho.					
Send comments to The Honorable Leonard Harlig, Chairperson, Blaine County Board of Commissioners, P.O. Box 400, Hailey, Idaho 83333.					
Louisiana	Greenwood (Town) Caddo Parish.	Cross Bayou Tributary 1	Approximately 1,900 feet downstream of State Highway 79.	None	*203
			Approximately 1,600 feet upstream of U.S. Highway 80.	None	*220
		Cross Bayou Tributary 2	Approximately 800 feet downstream of Speedway Drive.	None	*202
			Approximately 3,000 feet upstream of U.S. Highway 80.	None	*229
		Cross Bayou Tributary 3	Approximately 100 feet downstream of Union Pacific Railroad.	None	*209
			Approximately 1,000 feet upstream of U.S. Highway 80.	None	*259
		Gilmer Bayou Tributary 1	At limit of detailed study at eastern corporate limits.	None	*234
			Approximately 6,000 feet above eastern corporate limits.	None	*265

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Gilmer Bayou Tributary 2	Approximately 550 feet downstream of Waterwood Drive.	None	*234
			Approximately 3,000 feet upstream of Beebe Drive.	None	*270
		Gilmer Bayou Tributary 3	Approximately 1,750 feet downstream of Winburn Drive.	None	*244
			Approximately 2,250 feet upstream of Winburn Drive.	None	*272
Maps are available for inspection at 9381 Greenwood Road, Greenwood, Louisiana.					
Send comments to The Honorable Owen D. Adams, Mayor, Town of Greenwood, P.O. Box 195, Greenwood, Louisiana 71033.					
Oklahoma	Allen (Town) Pontotoc and Hughes Counties.	Town Branch	Approximately 500 feet downstream of Commerce Street.	None	*837
			Approximately 1,500 feet upstream of ''B'' Street.	None	*855
Maps are available for inspection at the Town of Allen Town Hall, Allen, Oklahoma.					
Send comments to The Honorable Geneva Vinson, Mayor, Town of Allen, P.O. Box 402, Allen, Oklahoma 74825.					
Oregon	Troutdale (City) Multnomah County.	Beaver Creek	At Jackson Park Road	*40	*40
			Just upstream of Troutdale Road	None	*183
			Approximately 200 feet downstream of Southeast Stark Street.	None	*242
Maps are available for inspection at the City of Troutdale Community Development Department, 104 Southeast Kibling Avenue, Troutdale, Oregon.					
Send comments to The Honorable Paul Thalhofer, Mayor, City of Troutdale, 104 Southeast Kibling Avenue, Troutdale, Oregon 97060.					

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

Dated: December 18, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–33931 Filed 12–29–97; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 376

[FHWA Docket No. FHWA–97–3050]

RIN 2125–AE26

Exemption of Commonly-Owned Motor Carriers From Equipment Identification and Receipt Requirements Applicable to Leased and Interchanged Vehicles

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The FHWA is proposing to modify its regulations under 49 CFR part 376 governing the lease and interchange of motor vehicle equipment by exempting commonly-owned and controlled motor carriers from the vehicle identification and exchange of receipt requirements of § 376.22 and the identification of equipment requirement of § 376.31. The FHWA routinely grants waivers from these requirements on an individual basis. This proposed action would eliminate the need for carriers to obtain individual waivers from the FHWA.

DATES: Comments to this NPRM should be received no later than March 2, 1998. Late comments will be considered to the extent practicable.

ADDRESSES: All signed, written comments should refer to the docket number appearing at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Grimm, Director, Office of Motor Carrier Information Analysis, (202) 366–4039, or Mr. Michael J. Falk, Motor Carrier Law Division, Office of the Chief Counsel, (202) 366–1384, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The FHWA's regulations at 49 CFR part 376 govern motor carrier transportation provided in nonowned equipment. These regulations, originally promulgated by the Interstate Commerce Commission (ICC), were formerly codified at 49 CFR part 1057 until redesignated on October 21, 1996. The ICC Termination Act of 1995 (ICCTA), Public Law 104–88, 109 Stat. 803, transferred jurisdiction over motor carrier leasing and interchange of equipment practices to the Secretary of Transportation, who delegated this function to the FHWA under 49 CFR 1.48(h)(6).

Section 376.22 permits motor carriers of property, subject to registration under the ICCTA (authorized carriers), to trip lease equipment between themselves and private motor carriers under specified conditions. A trip lease is a contract for the use of nonowned vehicles for single point-to-point hauls. Section 376.22(a) requires that trip-leasing carriers comply with the identification of equipment

requirements of § 376.11(c). Under § 376.22(c)(2), the carriers must also have a written agreement placing control and responsibility for the equipment with the lessee during the lease period, as determined by an exchange of equipment receipts required under § 376.11(b). Section 376.22(c)(4) permits the use of a master lease under certain conditions to comply with the trip-leasing requirements.

Vehicle Identification Requirements

Under § 376.11(c)(1), an authorized carrier acquiring the use of nonowned equipment must identify the equipment in accordance with the marking of commercial vehicle regulations at 49 CFR part 390, subpart D (formerly 49 CFR part 1058). These regulations require that commercial vehicles display the name or trade name of the motor carrier operating the vehicle, as well as its principal place of business and motor carrier identification number.

Equipment Receipt Requirements

Under § 376.11(b), at the time the authorized carrier acquires the use of nonowned equipment, it must give the owner of the equipment a receipt specifically identifying the equipment and the date and time of day possession is transferred. A receipt must also be given when the authorized carrier returns possession of the equipment to the owner, if required by the lease agreement.

Purpose of These Requirements

The leasing regulations are intended to ensure that motor carriers providing transportation in vehicles owned and operated by others assume responsibility for, and control the transportation service in, equipment they do not own to the same extent as if they owned the vehicles themselves. This not only affixes carrier responsibility and liability for the protection of shippers and the general public, but also facilitates enforcement of applicable regulatory requirements. The equipment identification and exchange of receipt requirements in §§ 376.22(a) and (c) are designed to monitor control and responsibility for the operation of leased vehicles.

Waivers for Commonly-Owned Carriers

Over the years, motor carriers under joint ownership or control have requested individual waivers from the equipment identification and exchange of receipt requirements of §§ 376.22(a) and (c), when exchanging equipment among themselves, on the grounds that compliance is unnecessary and unduly burdensome as long as the carriers remain under joint ownership and control. The FHWA, as did the ICC before it, has granted these waivers on the condition that the carriers continue to comply with other applicable provisions of § 376.22 and that contractual relationships between owner-operators and the individual carriers will be governed by §§ 376.11 and 376.12. The purpose of this notice of proposed rulemaking is to establish a blanket exemption from the vehicle identification and receipt requirements of § 376.22 for jointly-owned or controlled carriers, thus eliminating the need for individual waiver petitions. Such carriers would still be required to comply with the other applicable provisions of § 376.22, as well as §§ 376.11 and 376.12.

The FHWA has granted individual waivers from the § 376.22 identification of vehicles and exchange of receipt requirements because these requirements serve little public purpose when vehicles are being exchanged between commonly-controlled companies which are jointly operated with respect to safety program administration and equipment utilization. Vehicle ownership and assignment information can be readily made available from computerized dispatch records and operational logs, obviating the need for strict identification, placarding and receipt issuance requirements. Furthermore, commonly-controlled carriers seeking waivers claim that the elimination of these requirements would allow them to operate more efficiently and economically by fostering improved equipment use and eliminating a significant and unproductive paperwork and placarding burden.

The proposed action is consistent with the National Transportation Policy because it will promote efficiency in the motor carrier transportation system and encourage more productive use of equipment and energy resources. See 49 U.S.C. 13101(a)(2)(B) and (E). It would also allow FHWA to conserve its own resources by eliminating the need to grant waivers on an individual basis.

Interchange Identification Requirements

For purposes of consistency between the leasing regulations in subpart B of part 376 and the interchange regulations in subpart D of that part, we are also proposing to modify § 376.31(d) with respect to the interchange of equipment between commonly-controlled authorized carriers. Interchange of equipment occurs when one motor common carrier receives equipment from another in order to continue a through movement. Section 376.31(d)(1) requires that the carrier giving up possession of the equipment remove all placarding identification showing it as the operating entity, and that the carrier receiving possession mark the equipment with its own name, place of business and identification number, in accordance with 49 CFR part 390, subpart D. New paragraph (d)(3) would eliminate this requirement for commonly-controlled carriers interchanging equipment among themselves. It would also eliminate, for these carriers, the § 376.31(d)(2) requirement that each vehicle carry a detailed interchange statement.

The FHWA solicits public comment on the proposed modifications of §§ 376.22 and 376.31(d), which are set forth below.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required. The rulemaking merely proposes to exempt a small number of transportation entities from complying with identification and documentation requirements which FHWA has routinely waived upon request. Neither the individual nor cumulative impact of this action would be significant.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the

effects of this rule on small entities. Based on the evaluation, the FHWA hereby certifies that this action would not have a significant economic impact on a substantial number of small entities. The FHWA receives less than ten petitions per year seeking waiver of vehicle identification and receipt issuance requirements. The proposed rule, while beneficial, would not have a significant economic impact.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq*. It is specifically designed to eliminate certain existing paperwork requirements for commonly-controlled motor carriers leasing or interchanging vehicles among themselves. Thus, this action is consistent with goals of the Paperwork Reduction Act.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq*.) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 376

Highways and roads, Motor carriers—equipment leasing, Reporting and recordkeeping requirements.

Issued: December 18, 1997.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing and under the authority of section 103 of the ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803, and 49 CFR 1.48, the FHWA proposes to amend title 49, chapter III, as follows:

1. The authority citation for part 376 continues to read as follows:

Authority: 49 U.S.C. 13301 and 14102; 49 CFR 1.48.

2. Section 376.22 is amended by adding new paragraph (d) to read as follows:

§ 376.22 Exemption for private carrier leasing and leasing between authorized carriers.

* * * * *

(d) Authorized and private carriers under common ownership and control may lease equipment to each other under this section without complying with the requirements of paragraph (a) of this section pertaining to identification of equipment, and the requirements of paragraphs (c)(2) and (c)(4) of this section pertaining to equipment receipts. The leasing of equipment between such carriers will be subject to all other requirements of this section.

3. Section 376.31 is amended by adding paragraph (d)(3) to read as follows:

§ 376.31 Interchange of equipment.

* * * * *

(d)(3) Authorized carriers under common ownership and control may interchange equipment with each other without complying with the requirements of paragraph (d)(1) of this section pertaining to removal of identification from equipment, and the requirements of paragraph (d)(2) of this section pertaining to the identification of equipment.

[FR Doc. 97–33902 Filed 12–29–97; 8:45 am]

BILLING CODE 4910–22–P

Notices

Federal Register

Vol. 62, No. 249

Tuesday, December 30, 1997

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

Forest Service

San Juan Fuels Management, Wildlife Habitat Management, and Timber Harvest Projects

AGENCY: Forest Service, USDA.

ACTION: Revised Notice; Intent to prepare environmental impact statement.

SUMMARY: The Forest Service is preparing an environmental impact statement (EIS) for a proposal to implement a Fuels and Wildlife improvement project on the Nevada County Ranger District. This project intends to utilize vegetative manipulation, biomass removal, and prescribed fire to lower existing fire hazards and improve wildlife habitat in the project area. Some timber will be harvested to help accomplish desired levels of crown closures and spacing of standing trees. The Notice of Intent to prepare an Environmental Impact Statement was published in the **Federal Register** on Wednesday, March 12, 1997 [Volume 62, Number 48, Page 11413–11414]. That Notice announced the project name as San Juan Wildlife and Fuels Improvement Projects; now, the name has been changed to San Juan Fuels Management, Wildlife Habitat Management, and Timber Harvest Projects.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Donn Thane, San Juan Project Coordinator, 631 Coyote Street, Nevada City, CA 95959, phone (916) 265–4531.

Dated: December 15, 1997.

Judie L. Tartaglia,

Deputy Forest Supervisor.

[FR Doc. 97–33818 Filed 12–29–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Olympic Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Olympic PIEC Advisory Committee will meet on January 29, 1997 at the Skokomish Tribal Center located at N. 80 Tribal Center Road in Shelton, Washington. The meeting will begin at 9:30 a.m. and continue until 3:00 p.m. Agenda items to be covered include: (1) Survey of Provincial Advisory Committees; (2) Update on Hood Canal District Programs; (3) Recreation Fee Demonstration; (4) Water Quality Planning; (5) Update on Olympic AMA Guide; and (6) Open Public Forum. Olympic Province Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Kathy Snow, Province Liaison, USDA, Quilcene Ranger District, P.O. Box 280, Quilcene, WA 98376, (360) 765–2211.

Dated: December 19, 1997.

Ronald R. Humphrey,

Forest Supervisor.

[FR Doc. 97–33851 Filed 12–29–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122297E]

Federal Investment Task Force; Public Meeting

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

ACTION: Notice of Public Meeting.

SUMMARY: The Sustainable Fisheries Act (SFA) requires the Secretary of Commerce (Secretary) to establish a task force to study the role of the Federal Government in subsidizing fleet capacity and influencing capital investment in fisheries. The Federal Investment Task Force will hold its first meeting on January 6–8, 1998, in Silver Spring, MD.

DATES: The meeting of the task force will be held January 6–8, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Town Center Silver Spring Hotel, 8727 Colesville Rd., Silver Spring, MD 20910; telephone (301) 589–5200.

FOR FURTHER INFORMATION CONTACT: Robert Beal, Atlantic States Marine Fisheries Commission, (202) 289–6400; fax:(202) 289–6051; email: rbeal@asmfc.org, or Matteo Milazzo at (301) 713–2276.

SUPPLEMENTARY INFORMATION:

Meeting Dates

January 6, 1998, 1:00 p.m. to 5:00 p.m.

The Task Force will develop the general guidelines by which it will function. The Task Force will also discuss the approach that will be taken to complete this study and develop the report, including the breadth of the project.

January 6, 1998, 7:00 p.m. to 9:00 p.m.

The Task Force will hear public input regarding the Federal Investment Study. The public is encouraged to comment on the general scope and concept of the project, as well as specific Federal programs that should be considered by the Task Force.

January 7, 1998, 8:30 a.m. to 5:00 p.m.

The Task Force will begin a discussion of Federal programs that may have directly induced increases in fishing capacity and capital investment

January 8, 1998, 8:30 a.m. to 2:00 p.m.

The Task Force will continue to discuss Federal programs that may have directly induced increases in fishing capacity and capital investment. The Task Force will also schedule its next meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Bob Beal at (202) 289–6400 at least 5 days prior to the meeting date.

Dated: December 22, 1997.

Bruce Morehead,

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

[FR Doc. 97–33890 Filed 12–23–97; 3:51 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121797B]

Gulf of Mexico Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene three public hearings on Draft Amendment 6 to the Fishery Management Plan for Stone Crab Resources of the Gulf of Mexico (FMP).

DATES: The public hearings will be held from January 6–8, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the hearings. Written comments on Draft Amendment 6 must be received by January 15, 1998.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for locations of the hearings. Written comments on Amendment 6 should be sent to the Council at the following address.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, Florida 33619.

FOR FURTHER INFORMATION CONTACT: Wayne Swingle, Executive Director, 813–228–2815.

SUPPLEMENTARY INFORMATION: The Council will hold public hearings on Draft Amendment 6 to the FMP. Amendment 6 would extend the current moratorium on issuance of Federal vessel registrations for the stone crab fishery in the Gulf of Mexico off Florida. The FMP provided that persons could fish commercially in Federal waters if they had either a state stone crab permit or had registered their vessel with NMFS. No one has ever requested a Federal vessel registration.

In 1995, under Amendment 5 to the FMP, the Council placed a moratorium on registration of vessels by NMFS, and the state of Florida, by legislative action, placed a moratorium on the issuance of any additional stone crab permits. The purpose of both actions was to provide time for the stone crab industry to consider whether a limited access system was needed for the fishery and to develop such a system for implementation by the Florida Legislature. The purpose of the Council action proposed in Draft Amendment 6 is to prohibit registration of vessels for up to an additional 4 years so that the industry, state, and Council have adequate time to develop and implement a limited access system.

Public hearings on Amendment 6 are scheduled as follows, from 7:00 p.m to 10:00 p.m.

1. Tuesday, January 6, 1998; Regional Service Center County Building, 2796 Overseas Highway (U.S. Highway 1), Marathon, Florida 33050.

2. Wednesday, January 7, 1998; Naples Depot Civic-Cultural Center, 1051 5th Avenue South, Naples, Florida 33940.

3. Thursday, January 8, 1998; Plantation Inn & Gulf Resort, 9301 West Fort Island Trail, Crystal River, Florida 34429.

A copy of Amendment 6 can be obtained by contacting the Council Executive Director (see **FOR FURTHER INFORMATION CONTACT**).

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by December 29, 1997.

Dated: December 22, 1997.

Gary C. Matlock,

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

[FR Doc. 97–33888 Filed 12–23–97; 3:51 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122397H]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting.

DATES: The meeting will be held on January 9, 1996, beginning at 9:00 a.m. and conclude at 4:30 p.m.

ADDRESSES: This meeting will be held at the New Orleans Airport Hilton Hotel, 901 Airline Highway, Kenner, LA; telephone: 504–469–5000.

Council address: Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Antonio B. Lamberte, Economist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Shrimp Advisory Panel (AP) will review scientific information on the cooperative shrimp closure with the state of Texas, royal red shrimp regulatory amendment (tentative) and comparison of shrimp vessel effort and bycatch characterization effort. The AP consists principally of commercial shrimp fishermen, dealers and association representatives. The AP will develop recommendations to the Council regarding the extent of Federal waters off Texas that will be closed in 1996 concurrently with the closure of Texas waters. If Amendment 8 to the Shrimp Fishery Management Plan is approved, the AP will review a regulatory amendment that would provide a procedure for setting a total allowable catch of royal red shrimp. The AP will also develop recommendations regarding the level of effort in the shrimp fishery after reviewing information that compares levels of effort collected using the current method and effort collected from the bycatch characterization study.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by January 2, 1996.

Dated: December 23, 1997.

Gary C. Matlock,

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

[FR Doc. 97–33972 Filed 12–23–97; 3:51 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.121597A]

Marine Fisheries Advisory Committee; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: Notice is hereby given of meetings of the Marine Fisheries Advisory Committee (MAFAC) from January 20 to January 22, 1998.

DATES: The meetings are scheduled as follows:

1. January 20, 1998, 8:15 a.m. - 5:15 p.m.
2. January 21, 1998, 8:30 a.m. - 4:00 p.m.
3. January 22, 1998, 8:30 a.m. - 3:00 p.m.

ADDRESSES: The meetings will be held at the Camberley Gunter Hotel, 205 East Houston Street, San Antonio, TX. Requests for special accommodations may be directed to MAFAC, Office of Operations, Management and Information, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lu Cano, Executive Secretary; telephone: (301) 713–2252.

SUPPLEMENTARY INFORMATION: As required by section 10(a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of meetings of MAFAC and MAFAC Subcommittees. MAFAC was established by the Secretary of Commerce (Secretary) on February 17, 1971, to advise the Secretary on all living marine resource matters that are the responsibility of Commerce. This Committee ensures that the living marine resource policies and programs of the Nation are adequate to meet the needs of commercial and recreational fisheries, and of environmental, state, consumer, academic, and other national interests.

Matters to be Considered

January 20, 1998 - Subcommittee Meetings

1. Protected Resources and Habitat Subcommittee
2. Commercial Fisheries Subcommittee
3. Trade and Consumer Affairs Subcommittee
4. Recreational Fisheries Subcommittee

January 21, 1998

1. Summary of disposition of matters from previous meeting
2. Report and discussion of harmful algae bloom
3. Report and discussion of trade and environment issues
4. Report and discussion on the status of the Endangered Species Act Reauthorization
5. Report and discussion of El Nino: impacts and consequences to marine fisheries

January 22, 1998

1. Report on the Budget, Legislative and Constituent Affairs Programs of Fisheries
2. Report and discussion on the Status of Marine Fisheries, the Sustainable Fisheries Act, and the National Standards Guidelines.
3. Subcommittee reports and recommendations

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretations or other auxiliary aids should be directed to MAFAC (see **ADDRESSES**).

DATED: December 22, 1997.

David L. Evans,

Deputy Assistant Administrator, National Marine Fisheries Service.

[FR Doc. 97–33891 Filed 12–29–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Notice of Sea Grant Review Panel Meeting

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The members of the Review Panel and other participants will discuss matters related to the functions and operations of the Review Panel, issues related to strategic planning and program evaluation, the status of on-going Sea Grant programs and national initiatives, and recommendations on the application for designation of a Sea Grant College.

DATES: The announced meeting is scheduled for January 7–8, 1998.

ADDRESSES: National Sea Grant College Program, 1315 East-West Highway, Room 11876, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald C. Baird, Director, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11716, Silver Spring, Maryland 20910, (301) 713–2448.

SUPPLEMENTARY INFORMATION: The Panel, which consists of balanced representation from academia, industry, state government, and citizen's groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Pub. L. 94–461, 33 U.S.C. 1128) and advises the Secretary of Commerce, and the Under Secretary for Oceans and Atmosphere, also the Administrator of NOAA, and the Director of the National Sea Grant College Program with respect to operations under the act, and such other matters as the Secretary refers to the Panel for review and advice. The agenda for the meeting is as follows.

Wednesday, January 7, 1998

9:00 a.m.—Approval of Last Meeting Minutes
9:10 a.m.—NOAA Update
9:30 a.m.—National Sea Grant Office Update
11:15 a.m.—Sea Grant Technology
12:00 p.m.—Congressional Update
12:30 p.m.—*Lunch*
1:30 p.m.—Program Evaluation Reports and Sea Grant Network Wide Training Report
3:15 p.m.—Committee on Science and Technology Task Force Report
4:15 p.m.—Aquaculture Report
5:00 p.m.—*Adjourn*

Thursday, January 8, 1998

8:30 a.m.—Report from the Sea Grant Association
9:00 a.m.—Report of Meeting with NOAA Administrator, Dr. D. James Baker
9:30 a.m.—Committee on Panel Membership Report
10:15 a.m.—Sea Grant Liaison Reports
10:30 a.m.—HBCU Schools Committee Report
10:45 a.m.—Long Range Planning Committee Report
11:15 a.m.—Old and New Business Discussion
12:30 p.m.—*Adjourn*

The meeting will be open to the public.

Dated: December 22, 1997.

Alan R. Thomas,

Deputy Assistant Administrator for Oceanic and Atmospheric Research.

[FR Doc. 97–33793 Filed 12–29–97; 8:45 am]

BILLING CODE 3510–12–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

December 22, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

A Memorandum of Understanding dated February 1, 1997 between the Governments of the United States and the People's Republic of China establishes limits for textiles and textile products, produced or manufactured in China and exported during the period beginning on January 1, 1998 and extending through December 31, 1998.

In the letter published below from the Chairman of CITA, the Commissioner of Customs is directed to establish the limits for 1998.

These limits may be revised if China becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to China.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997).

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 22, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and a Memorandum of Understanding dated February 1, 1997 between the Governments of the United States and the People's Republic of China, you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998, in excess of the following restraint limits:

Category	Twelve-month limit
Group I	
200, 218, 219, 226, 237, 239, 300/301, 313–315, 317/326, 331, 333–336, 338/339, 340–342, 345, 347/348, 350–352, 359–C [1], 359–V [2], 360–363, 369–D [3], 369–H [4], 369–L [5], 410, 433-436, 438, 440, 442–444, 445/446, 447, 448, 607, 611, 613–615, 617, 631, 633–636, 638/639, 640–643, 644/844, 645/646, 647–652, 659–C [6], 659–H [7], 659–S [8], 666, 669–P [9], 670–L [10], 831, 833, 835, 836, 840, 842 and 845–847, as a group.	1,460,393,564 square meters equivalent.
Sublevels in Group I	
200	716,534 kilograms.
218	11,207,142 square meters.
219	2,369,354 square meters.
226	10,758,591 square meters.
237	1,962,225 dozen.
239	3,018,098 kilograms.
300/301	2,253,889 kilograms.
313	41,432,691 square meters.
314	48,452,618 square meters.
315	131,782,646 square meters.
317/326	20,945,770 square meters of which not more than 4,007,338 square meters shall be in Category 326.
331	5,159,139 dozen pairs.
333	96,243 dozen.
334	320,985 dozen.
335	386,367 dozen.
336	169,678 dozen.
338/339	2,322,334 dozen of which not more than 1,762,906 dozen shall be in Categories 338–S/339–S [11].
340	787,419 dozen of which not more than 393,710 dozen shall be in Category 340–Z [12].
341	682,293 dozen of which not more than 409,376 dozen shall be in Category 341–Y [13].
342	266,599 dozen.
345	128,774 dozen.
347/348	2,341,850 dozen.
350	163,758 dozen.
351	547,437 dozen.
352	1,637,299 dozen.
359–C	593,756 kilograms.
359–V	873,526 kilograms.
360	7,613,286 numbers of which not more than 5,192,996 numbers shall be in Category 360–P [14].
361	4,216,122 numbers.
362	7,106,078 numbers.
363	21,299,235 numbers.
369–D	4,661,929 kilograms.
369–H	4,900,256 kilograms.
369–L	3,257,851 kilograms.
410	989,156 square meters of which not more than 792,916 square meters shall be in Category 410–A [15] and not more than 792,916 square meters shall be in Category 410–B [16].
433	20,747 dozen.
434	13,266 dozen.
435	24,365 dozen.
436	15,011 dozen.
438	26,268 dozen.
440	37,528 dozen of which not more than 21,444 dozen shall be in Category 440–M [17].
442	39,725 dozen.
443	128,340 numbers.
444	204,867 numbers.
445/446	287,758 dozen.
447	70,265 dozen.
448	22,167 dozen.
607	3,192,346 kilograms.

Category	Twelve-month limit
611	5,292,928 square meters.
613	7,489,487 square meters.
614	11,769,194 square meters.
615	24,501,322 square meters.
617	17,118,826 square meters.
631	1,281,708 dozen pairs.
633	56,770 dozen.
634	617,623 dozen.
635	651,485 dozen.
636	547,047 dozen.
638/639	2,412,714 dozen.
640	1,379,670 dozen.
641	1,306,952 dozen.
642	331,199 dozen.
643	509,844 numbers.
644/844	3,650,454 numbers.
645/646	823,432 dozen.
647	1,555,261 dozen.
648	1,111,223 dozen.
649	929,792 dozen.
650	114,640 dozen.
651	766,180 dozen of which not more than 134,891 dozen shall be in Category 651–B [18].
652	2,719,455 dozen.
659–C	405,623 kilograms.
659–H	2,805,568 kilograms.
659–S	609,667 kilograms.
666	3,512,974 kilograms of which not more than 1,225,625 kilograms shall be in Category 666–C [19].
669–P	1,989,971 kilograms.
670–L	15,838,034 kilograms.
831	545,507 dozen pair.
833	28,212 dozen.
835	122,056 dozen.
836	277,394 dozen.
840	474,802 dozen.
842	266,117 dozen.
845	2,454,580 dozen.
846	177,334 dozen.
847	1,247,188 dozen.
Group II	
330, 332, 349, 353, 354, 359–O [20], 431, 432, 439, 459, 630, 632, 653, 654 and 659–O [21], as a group.	123,566,814 square meters equivalent.
Group III	
201, 220, 222, 223, 224–V [22], 224–O [23], 225, 227, 229, 369–O [24], 400, 414, 464, 465, 469, 600, 603, 604–O [25], 606, 618–622, 624–629, 665, 669–O [26] and 670–O [27], as a group.	256,320,423 square meters equivalent.
Sublevel in Group III	
224–V	3,564,824 square meters.
225	6,150,000 square meters.
Group IV	
832, 834, 838, 839, 843, 850–852, 858 and 859, as a group.	11,476,216 square meters equivalent.
Levels not in a Group	
369–S [28]	612,601 kilograms.
863–S [29]	8,618,529 numbers.
870	33,099,703 kilograms.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[2] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[4] Category 369–H: only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030.

[5] Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6090.

[6] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[7] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[8] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[9] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[10] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

[11] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[12] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[13] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[14] Category 360–P: only HTS numbers 6302.21.3010, 6302.21.5010, 6302.21.7010, 6302.21.9010, 6302.31.3010, 6302.31.5010, 6302.31.7010 and 6302.31.9010.

[15] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[16] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[17] Category 440–M: HTS numbers 6203.21.0030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.3020, 6205.90.4020 and 6211.31.0030.

[18] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[19] Category 666–C: only HTS number 6303.92.2000.

[20] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070 (Category 359–V).

[21] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[22] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[23] Category 224–O: all HTS numbers except 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020 (Category 224–V).

[24] Category 369–O: all HTS numbers except 6302.60.0010, 6302.91.0005 and 6302.91.0045 (Category 369–D); 4202.22.4020, 4202.22.4500, 4202.22.8030 (Category 369–H); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015, 4202.92.6090 (Category 369–L); and 6307.10.2005 (Category 369–S)

[25] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[26] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000 (Category 669–P).

[27] Category 670–O: only HTS numbers 4202.22.4030, 4202.22.8050 and 4202.32.9550.

[28] Category 369–S: only HTS number 6307.10.2005.

[29] Category 863–S: only HTS number 6307.10.2015.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and the People's Republic of China.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated February 10, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits may be revised if China becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to China.

The conversion factor for merged Categories 638/639 is 12.96 (square meters equivalent/category unit).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–33917 Filed 12–29–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Arab Republic of Egypt

Decembr 22, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Egypt and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits. The limits for Categories 338/339 and 448 are being reduced for carryforward applied to the 1997 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997).

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 22, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Egypt and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Fabric Group 218–220, 224–227, 313–317 and 326, as a group.	108,070,651 square meters.
Sublevels within Fabric Group	
218	2,508,000 square meters.
219	25,426,612 square meters.
220	25,426,612 square meters.
224	25,426,612 square meters.
225	25,426,612 square meters.
226	25,426,612 square meters.
227	25,426,612 square meters.
313	46,690,546 square meters.
314	25,426,612 square meters.
315	29,858,700 square meters.
317	25,426,612 square meters.
326	2,508,000 square meters.
Levels not in a group	
300/301	10,018,058 kilograms of which not more than 3,142,015 kilograms shall be in Category 301.
338/339	2,700,785 dozen.
340/640	1,183,745 dozen.
369–S [1]	1,498,989 kilograms.
448	18,018 dozen.

[1] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated December 20, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–33909 Filed 12–29–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

December 22, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Hong Kong and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Pursuant to the provisions of the ATC, the second stage of the integration commences on January 1, 1998 (see 60 FR 21075, published on May 1, 1995). Accordingly, certain previously restrained categories may have been modified or eliminated and certain limits may have been revised. Integrated products will no longer be subject to quota. CITA has informed Hong Kong of its intent to continue the bilateral visa arrangement for those products.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits. These limits have been increased, variously, for adjustments permitted under the flexibility provisions of the ATC.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 51832, published on October 3, 1997.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 22, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Hong Kong and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Group I	
200–227, 300–326, 360–363, 369(1)[1], 369pt.[2], 400–414, 464, 469pt.[3], 600–629, 666, 669pt.[4] and 670, as a group.	242,056,022 square meters equivalent.
Sublevels in Group I	
219	42,243,126 square meters.
218/225/317/326	73,902,425 square meters of which not more than 4,070,257 square meters shall be in Category 218(1)[5] (yarn dyed fabric other than denim and jacquard).
611	6,660,198 square meters.
617	4,202,118 square meters.
Group I subgroup	
200, 226/313, 314, 315, 369(1) and 604, as a group	112,565,729 square meters equivalent.
Within Group I subgroup	
200	364,204 kilograms.
226/313	75,775,098 square meters.
314	20,435,635 square meters
315	10,103,447 square meters.
369(1) (shoptowels)	830,299 kilograms.
604	250,001 kilograms.
Group II	
237, 239pt.[6], 331–348, 350–352, 359(1)[7], 359(2)[8], 359pt.[9], 431, 433–438, 440–448, 459pt.[10], 631, 633–652, 659(1)[11], 659(2)[12], 659pt.[13], and 443/444/643/644/843/844(1), as a group.	834,051,359 square meters equivalent.
Sublevels in Group II	
237	1,221,557 dozen.
331	4,274,499 dozen pairs.
333/334	305,741 dozen.
335	344,774 dozen.
338/339[14] (shirts and blouses other than tank tops and tops, knit).	2,930,479 dozen.
338/339(1)[15] (tank tops and knit tops).	2,201,684 dozen.
340	2,806,243 dozen.
345	465,080 dozen.
347/348	6,797,746 dozen of which not more than 6,707,746 dozen shall be in Categories 347–W/348–W[16]; not more than 5,083,385 dozen shall be in Category 348–W.
352	7,185,033 dozen.
359(1) (coveralls, overalls and jumpsuits).	631,126 kilograms.
359(2) (vests)	1,315,396 kilograms.
433	10,510 dozen.
434	11,283 dozen.
435	77,147 dozen.
436	100,479 dozen.
438	825,224 dozen.
442	93,221 dozen.
443	63,395 numbers.
444	42,211 numbers.
445/446	1,363,985 dozen.
447/448	68,594 dozen.
631	677,981 dozen pairs.
633/634/635	1,371,401 dozen of which not more than 512,934 dozen shall be in Categories 633/634 and not more than 1,053,082 dozen shall be in Category 635.
638/639	4,919,668 dozen.
641	850,098 dozen.
644	45,985 numbers.
645/646	1,348,388 dozen.
647	563,990 dozen.
648	1,176,258 dozen of which not more than 1,161,468 dozen shall be in Category 648–W[17].
649	868,319 dozen.
650	179,565 dozen.
652	5,078,903 dozen.

Category	Twelve-month restraint limit
659(1) (coveralls, overalls and jumpsuits).	697,559 kilograms.
659(2) (swimsuits)	286,743 kilograms.
443/444/643/644/843/844(1) (made-to-measure suits).	58,408 numbers.
Group II subgroup	
336, 341, 342, 350, 351, 636, 640, 642 and 651, as a group.	159,010,659 square meters equivalent.
Within Group II subgroup	
336	235,932 dozen.
341	2,840,564 dozen.
342	568,500 dozen.
350	141,744 dozen.
351	1,199,726 dozen.
636	317,522 dozen.
640	982,847 dozen.
642	252,506 dozen.
651	343,870 dozen.
Group III	
831, 833–838, 840–844, 847–858 and 859pt. [18], as a group.	45,395,915 square meters equivalent.
Sublevels in Group III	
834	12,922 dozen.
835	114,777 dozen.
836	169,543 dozen.
840	681,791 dozen.
842	267,161 dozen.
847	366,146 dozen.
Limits not in a group	
845(1) [19] (sweaters made in Hong Kong).	1,129,466 dozen.
845(2) [20] (sweaters assembled in Hong Kong from knit-to-shape components, knit elsewhere).	2,703,514 dozen.
846(1) [21] (sweaters made in Hong Kong).	182,645 dozen.
846(2) [22] (sweaters assembled in Hong Kong from knit-to-shape components, knit elsewhere).	440,107 dozen.

[1] Category 369(1): only HTS number 6307.10.2005.

[2] Category 369pt.: all HTS numbers except 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 6406.10.7700 and HTS number in 369(1).

[3] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[4] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[5] Category 218(1): all HTS numbers except 5209.42.0060, 5209.42.0080, 5211.42.0060, 5211.42.0080, 5514.32.0015 and 5516.43.0015.

[6] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[7] Category 359(1): only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[8] Category 359(2): only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[9] Category 359pt.: all HTS numbers except 6406.99.1550 and HTS numbers in 359(1) and 359(2).

[10] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[11] Category 659(1): only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[12] Category 659(2): only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[13] Category 659pt.: all HTS numbers except 6406.99.1510, 6406.99.1540 and HTS numbers in 659(1) and 659(2).

[14] Categories 338/339: all HTS numbers except 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.

[15] Category 338/339(1): only HTS numbers 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.

[16] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040;Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[17] Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

[18] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

[19] Category 845(1): only HTS numbers 6103.29.2074, 6104.29.2079, 6110.90.9024, 6110.90.9042 and 6117.90.9015.

[20] Category 845(2): only HTS numbers 6103.29.2070, 6104.29.2077, 6110.90.9022 and 6110.90.9040.

[21] Category 846(1): only HTS numbers 6103.29.2068, 6104.29.2075, 6110.90.9020 and 6110.90.9038.

[22] Category 846(2): only HTS numbers 6103.29.2066, 6104.29.2073, 6110.90.9018 and 6110.90.9036.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated December 5, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Products for integration in 1998 listed in the **Federal Register** notice published on May 1, 1995 (60 FR 21075) which are exported during 1997 shall be charged to the applicable limits to the extent of any unfilled balances. After January 1, 1998, should those unfilled balances be exhausted, such products shall no longer be charged to any limit, due to integration of these products into GATT 1994.

CITA has informed Hong Kong of its intent to continue the bilateral visa arrangement for those products. An export visa will continue to be required, if applicable, for products integrated on and after January 1, 1998, before entry is permitted into the United States.

The conversion factors for merged Categories 333/334, 633/634/635 and 638/639 are 33, 33.90 and 13, respectively. The conversion factor for Category 239pt. is 8.79.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–33916 Filed 12–29–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

December 22, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in India and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Pursuant to the provisions of the ATC, the second stage of the integration commences on January 1, 1998 (see 60 FR 21075, published on May 1, 1995). Accordingly, certain previously restrained categories may have been modified or eliminated and certain limits may have been revised. Integrated products will no longer be subject to quota. CITA has informed India of its intent to continue the bilateral visa arrangement for those products.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997. Also see 62 FR 51832, published on October 3, 1997; and 62 FR 60826, published on November 13, 1997.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 22, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in India and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
218	14,307,430 square meters.
219	66,259,880 square meters.
313	38,281,386 square meters.
314	7,888,081 square meters.
315	13,248,816 square meters.
317	40,003,022 square meters.
326	9,091,596 square meters.
334/634	140,994 dozen.
335/635	627,703 dozen.
336/636	879,834 dozen.
338/339	3,939,692 dozen.
340/640	1,995,483 dozen.
341	4,228,602 dozen of which not more than 2,537,160 dozen shall be in Category 341–Y [1].
342/642	1,271,100 dozen.
345	191,272 dozen.
347/348	615,384 dozen.
351/651	268,686 dozen.
363	44,711,478 numbers.
369–D [2]	1,315,188 kilograms.
369–S [3]	717,375 kilograms.
641	1,479,886 dozen.
647/648	859,356 dozen.
Group II	
200, 201, 220–227, 237, 239pt. [4], 300, 301, 331–333, 350, 352, 359pt. [5], 360–362, 600–604, 606 [6], 607, 611–629, 631, 633, 638, 639, 643–646, 649, 650, 652, 659pt. [7], 666, 669pt. [8], 670, 831, 833–838, 840–858 and 859pt. [9], as a group.	112,085,570 square meters equivalent.

[1] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[5] Category 359pt.: all HTS numbers except 6406.99.1550.

[6] Category 606: all HTS numbers except 5403.31.0040 (for administrative purposes Category 606 is designated as 606(1)).

[7] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[8] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[9] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated December 20, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Products for integration in 1998 listed in the **Federal Register** notice published on May 1, 1995 (60 FR 21075) which are exported during 1997 shall be charged to the applicable limits to the extent of any unfilled balances. After January 1, 1998, should those unfilled balances be exhausted, such products shall no longer be charged to any limit, due to integration of these products into GATT 1994.

CITA has informed India of its intent to continue the bilateral visa arrangement for those products. An export visa will continue to be required, if applicable, for products integrated on and after January 1, 1998, before entry is permitted into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–33915 Filed 12–29–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Republic of Korea

December 22, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Korea and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Pursuant to the provisions of the ATC, the second stage of the integration commences on January 1, 1998 (see 60 FR 21075, published on May 1, 1995). Accordingly, certain previously restrained categories may have been modified or eliminated and certain limits may have been revised. Integrated products will no longer be subject to quota. CITA has informed Korea of its intent to continue the bilateral visa arrangement for those products.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits. In accordance with the special swing provision contained in the exchange of notes dated April 2 and 8, 1997 between the Governments of the United States and Korea, 59,407,515 square meters equivalent is being charged to the 1998 Group II limit.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 51832, published on October 3, 1997.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 22, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in the Republic of Korea and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Group I	
200–223, 224–V [1], 224–O [2], 225, 226, 227, 300–326, 360–363, 369pt. [3], 400–414, 464, 469pt. [4], 600–629, 666, 669–P [5], 669pt. [6] and 670–O [7], as a group.	386,870,998 square meters equivalent.
Sublevels within Group I	
200	461,113 kilograms.
201	2,183,034 kilograms.
218	9,346,896 square meters.
219	8,510,994 square meters.
224–V	10,729,411 square meters.
300/301	3,135,399 kilograms.
313	51,096,363 square meters.
314	28,489,091 square meters.
315	18,272,754 square meters.
317/326	18,988,737 square meters.
363	1,094,272 numbers.
410	3,551,791 square meters.
604	388,754 kilograms.
607	1,121,629 kilograms.
611	3,738,759 square meters.
613/614	6,231,263 square meters.
617	5,167,390 square meters.
619/620	94,532,277 square meters.
624	9,118,923 square meters.
625/626/627/628/629.	15,952,036 square meters.
669–P	2,294,475 kilograms.
Group II	
237, 239pt. [8], 331–348, 350–352, 359–H [9], 359pt. [10], 431, 433–438, 440–448, 459–W [11], 459pt. [12], 631, 633–652, 659–H [13], 659–S [14] and 659pt. [15], as a group.	584,556,337 square meters equivalent.
Sublevels within Group II	
237	62,007 dozen.
239pt.	250,725 kilograms.
333/334/335	280,407 dozen of which not more than 143,320 dozen shall be in Category 335.
336	59,258 dozen.
338/339	1,246,253 dozen.
340	648,052 dozen of which not more than 336,489 dozen shall be in Category 340–D [16].
341	182,729 dozen.
342/642	225,379 dozen.
345	121,071 dozen.
347/348	461,113 dozen.
350	17,235 dozen.
351/651	236,766 dozen.
352	184,245 dozen.
359–H	2,654,234 kilograms.
433	13,935 dozen.
434	7,147 dozen.
435	35,230 dozen.
436	14,914 dozen.
438	59,793 dozen.
440	198,651 dozen.
442	50,399 dozen.
443	322,056 numbers.
444	54,920 numbers.
445/446	52,277 dozen.
447	89,190 dozen.
448	35,456 dozen.
459–W	95,910 kilograms.
631	311,096 dozen pairs.
633/634/635	1,358,622 dozen of which not more than 154,065 dozen shall be in Category 633 and not more than 574,152 dozen shall be in Category 635.
636	271,507 dozen.
638/639	5,289,591 dozen.
640–D [17]	3,136,590 dozen.
640–O [18]	2,613,824 dozen.

Category	Twelve-month restraint limit
641	1,053,642 dozen of which not more than 39,799 dozen shall be in Category 641–Y [19].
643	780,589 numbers.
644	1,174,362 numbers.
645/646	3,592,927 dozen.
647/648	1,328,005 dozen.
650	25,221 dozen.
659–H	1,340,420 kilograms.
659–S	185,476 kilograms.
Group III	
831, 833–838, 840–844, 847–858 and 859pt. [20], as a group.	17,418,627 square meters equivalent.
Sublevel within Group III	
835	28,798 dozen.
Group IV	
845	2,315,056 dozen.
846	818,787 dozen.
Group VI	
369–L/670–L/870[21].	73,117,988 square meters equivalent.

[1] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36,0020.

[2] Category 224–O: all remaining HTS numbers in Category 224.

[3] Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015, 4202.92.6090 (Category 369–L); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5602.99.1090, 5705.00.2020 and 6406.10.7700.

[4] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[5] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[6] Category 669pt.: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[7] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

[8] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[9] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060.

[10] Category 359pt.: all HTS numbers except 6505.90.1540, 6505.20.2060 (Category 359–H); and 6406.99.1550.

[11] Category 459–W: only HTS number 6505.90.4090.

[12] Category 459pt.: all HTS numbers except 6505.90.4090 (Category 459–W); 6405.20.6030, 6405.20.6060, 6405.20.6090, 6405.99.1505 and 6406.99.1560.

[13] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[14] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[15] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.91015, 6504.00.9060, 6505.90.5090, 6505.90.606090, 6505.90.7090 and 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S); 6406.99.1510 and 6406.99.1540.

[16] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030.

[17] Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[18] Category 640–O: all HTS numbers except 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030 (Category 640–D).

[19] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

[20] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

[21] Category 870; Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6090; Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated November 14, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Products for integration in 1998 listed in the **Federal Register** notice published on May 1, 1995 (60 FR 21075) which are exported during 1997 shall be charged to the applicable limits to the extent of any unfilled balances. After January 1, 1998, should those unfilled balances be exhausted, such products shall no longer be charged to any limit, due to integration of these products into GATT 1994.

CITA has informed Korea of its intent to continue the bilateral visa arrangement for those products. An export visa will continue to be required, if applicable, for products integrated on and after January 1, 1998, before entry is permitted into the United States.

The conversion factors for the following merged categories are listed below:

Category	Conversion factor (Square meters equivalent/category unit)
333/334/335	33.75
369–L/670–L/870	3.8
633/634/635	34.1
638/639	12.96

In accordance with exchange of notes dated April 2 and April 8, 1997 between the Governments of the United States and Korea, for products exported in 1997, you are directed to charge 59,407,515 square meters equivalent to the Group II limit established in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–33914 Filed 12–29–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Malaysia

December 22, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Malaysia and exported during the period January 1, 1998 through

December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Pursuant to the provisions of the ATC, the second stage of the integration commences on January 1, 1998 (see 60 FR 21075, published on May 1, 1995). Accordingly, certain previously restrained categories may have been modified or eliminated and certain limits may have been revised. Integrated products will no longer be subject to quota. CITA has informed Malaysia of its intent to continue the bilateral visa arrangement for those products.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits. The limits for Categories 336/636, 338/339, 347/348, 619, 620 and 638/639 are being reduced for carryforward applied to the 1997 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 51832, published on October 3, 1997.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 22, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended, and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in Malaysia and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following limits:

Category	Twelve-month restraint limit
Fabric Group	
218, 219, 220, 225–227, 313–315, 317, 326, 611, 613/614/615/617, 619 and 620, as a group.	123,734,420 square meters.
Sublevels within the group	
218	7,099,273 square meters.
219	34,392,033 square meters.
220	34,392,033 square meters.
225	34,392,033 square meters.
226	34,392,033 square meters.
227	34,392,033 square meters.
313	41,018,021 square meters.
314	49,347,781 square meters.
315	34,392,033 square meters.
317	34,392,033 square meters.
326	6,650,644 square meters.
611	3,990,386 square meters.
613/614/615/617	39,478,226 square meters.
619	5,026,835 square meters.
620	6,283,543 square meters.
Other specific limits	
200	299,373 kilograms.
237	402,804 dozen.
300/301	3,175,182 kilograms.
331/631	2,180,033 dozen pairs.
333/334/335/835	250,005 dozen of which not more than 150,003 dozen shall be in Category 333 and not more than 150,003 dozen shall be in Category 835.
336/636	458,595 dozen.
338/339	1,136,966 dozen.
340/640	1,401,716 dozen.
341/641	1,816,676 dozen of which not more than 648,100 dozen shall be in Category 341.
342/642/842	435,133 dozen.
345	166,859 dozen.
347/348	481,848 dozen.
350/650	156,926 dozen.
351/651	270,002 dozen.
363	4,229,809 numbers.
435	15,440 dozen.
438–W [1]	12,635 dozen.
442	18,815 dozen.
445/446	29,866 dozen.
604	1,392,247 kilograms.
634/635	847,896 dozen.
638/639	471,904 dozen.
645/646	382,028 dozen.
647/648	1,797,782 dozen of which not more than 1,258,445 dozen shall be in Category 647–K [2] and not more than 1,258,445 dozen shall be in Category 648–K [3].
Group II	
201, 222–224, 239pt. [4], 332, 352, 359pt. [5], 360–362, 369pt. [6], 400–431, 433, 434, 436, 438–O [7], 440, 443, 444, 447, 448, 459pt. [8], 464, 469pt. [9], 600–603, 606, 607, 618, 621, 622, 624–629, 633, 643, 644, 649, 652, 659pt. [10], 666, 669pt. [11], 670, 831, 833, 834, 836, 838, 840, 843–858 and 859pt. [12], as a group.	40,586,900 square meters equivalent.

[1] Category 438–W: only HTS numbers 6104.21.0060, 6104.23.0020, 6104.29.2051, 6106.20.1010, 6106.20.1020, 6106.90.1010, 6106.90.1020, 6106.90.2520, 6106.90.3020, 6109.90.1540, 6109.90.8020, 6110.10.2080, 6110.30.1560, 6110.90.9074 and 6114.10.0040.

[2] Category 647–K: only HTS numbers 6103.23.0040, 6103.23.0045, 6103.29.1020, 6103.29.1030, 6103.43.1520, 6103.43.1540, 6103.43.1550, 6103.43.1570, 6103.49.1020, 6103.49.1060, 6103.49.8014, 6112.12.0050, 6112.19.1050, 6112.20,.1060 and 6113.00.9044.

[3] Category 648–K: only HTS numbers 6104.23.0032, 6104.23.0034, 6104.29.1030, 6104.29.1040, 6104.29.2038, 6104.63.2006, 6104.63.2011, 6104.63.2026, 6104.63.2028, 6104.63.2030, 6104.63.2060, 6104.69.2030, 6104.69.2060, 6104.69.8026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.9052 and 6117.90.9070.

[4] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[5] Category 359pt.: all HTS numbers except 6406.99.1550.

[6] Category 369pt.: all HTS numbers except 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5701.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5602.99.1090, 5705.00.2020 and 6406.10.7700.

[7] Category 438–O: only HTS numbers 6103.21.0050, 6103.23.0025, 6105.20.1000, 6105.90.1000, 6105.90.8020, 6109.90.1520, 6110.10.2070, 6110.30.1550, 6110.90.9072, 6114.10.0020 and 6117.90.9025.

[8] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6405.99.1505 and 6406.99.1560.

[9] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[10] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[11] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[12] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see the November 4, 1996 directive) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Products for integration in 1998 listed in the **Federal Register** notice published on May 1, 1995 (60 FR 21075) which are exported during 1997 shall be charged to the applicable limits to the extent of any unfilled balances. After January 1, 1998, should those unfilled balances be exhausted, such products shall no longer be charged to any limit, due to integration of these products into GATT 1994.

CITA has informed Malaysia of its intent to continue the bilateral visa arrangement for those products. An export visa will continue to be required, if applicable, for products integrated on and after January 1, 1998, before entry is permitted into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–33913 Filed 12–29–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the United Mexican States

December 22, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing levels under the North America Free Trade Agreement.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In order to implement Annex 300–B of the North America Free Trade Agreement (NAFTA), restrictions and consultation levels for certain cotton, wool and man-made fiber textile products from Mexico are being established for the period beginning on January 1, 1998 and extending through December 31, 1998.

These restrictions and consultation levels do not apply to NAFTA originating goods, as defined in Annex 300–B, Chapter 4 and Annex 401 of the agreement. In addition, restrictions and consultation levels do not apply to textile and apparel goods that are assembled in Mexico from fabrics wholly formed and cut in the United States and exported from and re-imported into the United States under U.S. tariff item 9802.00.90.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to implement levels for the 1998 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997).

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 22, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the North America Free Trade Agreement (NAFTA), between the Governments of the United States, the United Mexican States and Canada, you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Mexico and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels:

Category	Twelve-month limit
219	9,438,000 square meters.
313	16,854,000 square meters.
314	6,966,904 square meters.
315	6,966,904 square meters.
317	8,427,000 square meters.
338/339/638/639	650,000 dozen.
340/640	160,200 dozen.
347/348/647/648	650,000 dozen.
410	397,160 square meters.
433	11,000 dozen.
443	175,479 numbers.
611	1,267,710 square meters.
633	10,000 dozen.
643	155,556 numbers.

The levels set forth above are subject to adjustment pursuant to the provisions of Annex 300–B of the NAFTA.

Products in the above categories exported during 1997 shall be charged to the applicable category levels for that year (see directive dated October 17, 1996) to the extent of any unfilled balances. In the event the levels established for that period have been exhausted by previous entries, such products shall be charged to the levels set forth in this directive.

The foregoing levels do not apply to NAFTA originating goods, as defined in Annex 300–B, Chapter 4 and Annex 401 of the agreement. In addition, restrictions and consultation levels do not apply to textile and apparel goods that are assembled in Mexico from fabrics wholly formed and cut in the United States and exported from and re-imported into the United States under U.S. tariff item 9802.00.90.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–33912 Filed 12–29–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Sri Lanka

December 22, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Sri Lanka and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits. The limits for certain categories have been reduced for carryforward and special carryforward applied to the 1997 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997).

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 22, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Sri Lanka and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
237	320,758 dozen.
314	4,788,464 square meters.
331/631	2,885,524 dozen pairs.
333/633	60,379 dozen.
334/634	635,953 dozen.
335/835	297,004 dozen.
336/636/836	418,883 dozen.
338/339	1,271,907 dozen.
340/640	1,216,593 dozen.
341/641	2,002,582 dozen of which not more than 1,335,055 dozen shall be in Category 341 and not more than 1,335,055 dozen shall be in Category 641.
342/642/842	695,239 dozen.
345/845	190,571 dozen.
347/348/847	1,067,528 dozen.
350/650	132,076 dozen.
351/651	328,802 dozen.
352/652	1,356,701 dozen.
359–C/659–C [1]	1,373,102 kilograms.
360	1,596,155 numbers.
363	12,924,324 numbers.
369–D [2]	1,027,014 kilograms.
369–S [3]	808,601 kilograms.
434	7,351 dozen.
435	15,753 dozen.
440	10,502 dozen.
611	6,251,607 square meters.
635	396,006 dozen.
638/639/838	1,008,379 dozen.
644	566,044 numbers.
645/646	226,417 dozen.
647/648	1,213,969 dozen.
840	314,843 dozen.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[3] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated December 20, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–33911 Filed 12–29–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

December 22, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In exchange of letters dated December 10, 1997, the American Institute in Taiwan (AIT) and the Taipei Economic and Cultural Representative Office (TECRO) agreed to extend the current textile agreement for three consecutive one-year periods, beginning on January 1, 1998 and extending through December 31, 2000.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the 1998 period.

These limits may be revised if Taiwan becomes a member of the World Trade Organization (WTO) and the WTO agreement is applied to Taiwan.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997).

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 22, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the textile agreement, effected by exchange of letters dated January 10, 1997 and May 2, 1997, as extended, between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office (TECRO), effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Taiwan and exported during the twelve-month period which begins on January 1, 1998 and extends through December 31, 1998, in excess of the following restraint limits:

Category	Twelve-month limit
Group I	
200–224, 225/317/326, 226, 227, 229, 300/301/607, 313–315, 360–363, 369–L/670–L/870 [1], 369–S [2], 369–O [3], 400–414, 464–469, 600–606, 611, 613/614/615/617, 618, 619/620, 621–624, 625/626/627/628/629, 665, 666, 669–P [4], 669–T [5], 669–O [6], 670–H [7] and 670–O [8], as a group.	573,050,168 square meters equivalent.
Sublevels in Group I	
218	21,132,407 square meters.
225/317/326	37,509,965 square meters.
226	6,806,861 square meters.
300/301/607	1,689,740 kilograms of which not more than 1,408,116 kilograms shall be in Category 300; not more than 1,408,116 kilograms shall be in Category 301; and not more than 1,408,116 kilograms shall be in Category 607.
363	12,085,702 numbers.
369–L/670–L/870	48,038,034 kilograms.
611	3,046,008 square meters.
613/614/615/617	18,891,037 square meters.
619/620	13,885,205 square meters.
625/626/627/628/629.	18,067,931 square meters.
669–P	328,468 kilograms.
669–T	1,067,593 kilograms.
670–H	18,395,052 kilograms.
Group I subgroup	
200, 219, 313, 314, 315, 361, 369–S and 604, as a group.	141,614,645 square meters equivalent.
Within Group I subgroup	
200	682,828 kilograms.
219	15,540,492 square meters.
313	65,991,614 square meters.
314	27,681,737 square meters.
315	21,211,264 square meters.
361	1,371,652 numbers.
369–S	482,759 kilograms.
604	225,488 kilograms.

Category	Twelve-month limit
Group II	
237, 239, 330–332, 333/334/335, 336, 338/339, 340–345, 347/348, 349, 350/650, 351, 352/652, 353, 354, 359–C/659–C [9], 359–H/659–H [10], 359–O [11], 431–444, 445/446, 447/448, 459, 630–632, 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 649, 651, 653, 654, 659–S [12], 659–O [13], 831–844 and 846–859, as a group.	755,000,000 square meters equivalent.
Sublevels in Group II	
237	667,132 dozen.
239	5,632,462 kilograms.
331	507,215 dozen pairs.
336	113,660 dozen.
338/339	783,223 dozen.
340	1,118,911 dozen.
345	118,762 dozen.
347/348	1,064,931 dozen of which not more than 1,064,931 dozen shall be in Categories 347–W/348–W [14].
352/652	3,015,525 dozen.
359–C/659–C	1,447,633 kilograms.
359–H/659–H	4,795,423 kilograms.
433	15,089 dozen.
434	10,478 dozen.
435	24,879 dozen.
436	4,953 dozen.
438	27,960 dozen.
440	5,416 dozen.
442	43,695 dozen.
443	42,246 numbers.
444	60,167 numbers.
445/446	135,421 dozen.
631	4,867,811 dozen pairs.
633/634/635	1,634,440 dozen of which not more than 959,317 dozen shall be in Categories 633/634 and not more than 850,077 dozen shall be in Category 635.
638/639	6,565,058 dozen.
640	1,058,909 dozen of which not more than 281,710 dozen shall be in Category 640–Y [15].
642	777,133 dozen.
643	502,751 numbers.
644	723,737 numbers.
645/646	4,107,691 dozen.

Category	Twelve-month limit
647/648	5,248,544 dozen of which not more than 5,248,544 dozen shall be in Categories 647–W/648–W [16].
659–S	1,601,702 kilograms.
835	19,020 dozen.
Group II Subgroup	
333/334/335, 341, 342, 350/650, 351, 447/448, 636, 641 and 651, as a group.	76,035,766 square meters equivalent.
Within Group II Subgroup	
333/334/335	292,416 dozen of which not more than 158,392 dozen shall be in Category 335.
341	338,229 dozen.
342	211,293 dozen.
350/650	135,358 dozen.
351	351,522 dozen.
447/448	20,618 dozen.
636	379,718 dozen.
641	730,350 dozen of which not more than 255,622 dozen shall be in Category 641–Y [17].
651	440,833 dozen.
Group III	
Sublevel in Group III	
845	851,213 dozen.

[1] Category 870; Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6090; Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 369–O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015, 4202.92.6090 (Category 369–L); and 6307.10.2005 (Category 369–S).

[4] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[5] Category 669–T: only HTS numbers 6306.12.0000, 6306.19.0010 and 6306.22.9030.

[6] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 6306.12.0000, 6306.19.0010 and 6306.22.9030 (Category 669–T).

[7] Category 670–H: only HTS numbers 4202.22.4030 and 4202.22.8050.

[8] Category 670–O: all HTS numbers except 4202.22.4030 4202.22.8050 (Category 670–H); 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

[9] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[10] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060; Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[11] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6505.90.1540 and 6505.90.2060 (Category 359–H).

[12] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[13] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[14] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[15] Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[16] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2015, 6203.49.2030, 6203.49.2045, 6203.49.2060, 6203.49.8030, 6210.40.5030, 6211.20.1525, 6211.20.3820 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

[17] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement concerning imports of textile and apparel products from Taiwan.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated November 4, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits may be revised if Taiwan becomes a member of the World Trade Organization (WTO) and the WTO agreement is applied to Taiwan.

The conversion factors are as follows:

Category	Conversion factors (square meters equivalent/category unit)
300/301/607	8.5
333/334/335	33.75
352/652	11.3
359–C/659–C	10.1
359–H/659–H	11.5
369–L/670–L/870	3.8
633/634/635	34.1
638/639	12.5

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–33910 Filed 12–29–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

December 22, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist,

Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Turkey and exported during the periods January 1, 1998 through March 27, 1998 and January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC), and Memoranda of Understanding (MOUs) dated July 19, 1995, between the Governments of the United States and the Republic of Turkey.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits. The limits for certain categories have been reduced for carryforward applied in 1997.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997).

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 22, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC); and Memoranda of Understanding (MOUs) dated July 19, 1995 between the Governments of the United States and the Republic of Turkey, you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Turkey and exported during the periods January 1, 1998 through March 27, 1998 (Categories 352/652) and January 1, 1998 through December 31, 1998, in excess of the following levels of restraint:

Category	Restraint limit
Fabric Group	
219, 313, 314, 315, 317, 326, 617, 625/626/627/628/629, as a group.	175,846,733 square meters of which not more than 40,184,564 square meters shall be in Category 219; not more than 48,114,466 square meters shall be in Category 313; not more than 28,575,690 square meters shall be in Category 314; not more than 38,398,585 square meters shall be in Category 315; not more than 40,184,564 square meters shall be in Category 317; not more than 4,464,950 square meters shall be in Category 326, and not more than 26,789,711 square meters shall be in Category 617.
Sublevel in Fabric Group	
625/626/627/628/629	18,089,753 square meters of which not more than 7,235,901 square meters shall be in Category 625; not more than 7,235,901 square meters shall be in Category 626; not more than 7,235,901 square meters shall be in Category 627; not more than 7,235,901 square meters shall be in Category 628; and not more than 7,235,901 square meters shall be in Category 629.
Limits not in a group	
200	1,695,542 kilograms.
300/301	8,255,474 kilograms.
335	356,446 dozen.
336/636	839,628 dozen.
338/339/638/639	4,939,309 dozen of which not more than 3,704,483 dozen shall be in Categories 338–S/339–S/638–S/639–S [1].
340/640	1,568,112 dozen of which not more than 445,991 dozen shall be in Categories 340–Y/640–Y [2].
341/641	1,548,584 dozen of which not more than 542,004 dozen shall be in Categories 341–Y/641–Y [3].
342/642	934,681 dozen.
347/348	5,085,297 dozen of which not more than 1,768,887 dozen shall be in Categories 347–T/348–T [4].
350	500,846 dozen.
351/651	800,767 dozen.
352/652	617,370 dozen.
361	1,782,231 numbers.
369–S [5]	1,842,488 kilograms.
410/624	1,103,680 square meters of which not more than 671,909 square meters shall be in Category 410.
448	37,871 dozen.
604	2,126,771 kilograms.
611	53,205,155 square meters.

[1] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

[2] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[3] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054; Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

[4] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6304.69.9010. 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[5] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated October 16, 1996) to the

extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–33918 Filed 12–29–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Concept Release on the Denomination of Customer Funds and the Location of Depositories

AGENCY: Commodity Futures Trading Commission.

ACTION: Request for comment.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is publishing this release to obtain the views of the public on how to address risks related to holding segregated funds offshore or in foreign currencies. The Commission wishes to consider how to update and otherwise to revise existing regulatory standards to avoid inhibiting transnational commodity futures activities or causing undue costs or operational inconvenience, without increasing risks to market participants. This initiative is part of the Commission's recently adopted strategic plan, which includes ensuring ''sound financial practices of clearing organizations and firms holding customer funds'' and facilitating ''the continued development of an effective, flexible, regulatory environment responsive to evolving market conditions.'' [1]

The Commodity Exchange Act (''Act'')[2] requires that all money, securities and property received by futures commission merchants (''FCMs'') to margin, guarantee, or secure customer trades or contracts on domestic contract markets, or accruing to customers as a result of these trades or contracts, be segregated. Until 1988, the Commission generally required that such money, securities and property (hereinafter collectively referred to as ''customer funds'') be held in the United States (''U.S.'') with the exception of certain funds held on behalf of non-U.S.-domiciled customers.[3]

In November 1988, the Commission issued Financial and Segregation Interpretation No. 12, ''Deposit of Customer Funds in Foreign Depositories'' (''Interpretation No. 12'').[4] Interpretation No. 12 permits customer funds to be held in depositories located outside of the U.S., subject to limitations and conditions intended for the protection of these funds. At the time Interpretation No. 12 was issued, the Commission stated its intention to ''monitor experience under this interpretation * * * to alter or supplement the conditions for keeping segregated funds offshore as such experience renders advisable.'' Various developments since 1988 make it appropriate to revisit this area.

Date: Comments must be received on or before March 2, 1998.

FOR FURTHER INFORMATION CONTACT: France M.T. Maca, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, N.W. Washington, D.C. 20581. Telephone: (202) 418–5482.

Table of Contents

I. Background
A. Current Regulatory Requirements
1. Commodity Regulation
2. Bankruptcy Regulation
3. Banking Regulation
B. Developments Since the Issuance of Interpretation No. 12
II. Policy Considerations
A. Goals
B. Risks
III. Potential Approaches
A. Permissible Denominations of Obligations
1. Alternatives
2. Discussion
B. Permissible Denominations of Assets
1. Alternatives
2. Discussion
C. Permissible Locations of Segregated Funds
1. Alternatives
2. Discussion
D. Qualifications of Depositories
1. Alternatives
2. Discussion
E. Segregation and Net Capital Treatment
1. Alternatives
2. Discussion
F. Bankruptcy Treatment
1. Alternatives
2. Discussion
IV. A Specific Approach
V. Request for Comment

SUPPLEMENTARY INFORMATION:

I. Background

A. Current Regulatory Requirements

1. Commodity Regulation

The maintenance and location of customer funds is prescribed by Section 4d of the Act which requires that each FCM:

> Treat and deal with all money, securities, and property received by such [FCM] to margin, guarantee, or secure the trades or contracts of any customer of such [FCM], or accruing to such customer as the result of such trades or contracts, as belonging to such customer. Such money, securities, and property shall be separately accounted for and shall not be commingled with the funds of such [FCM] or be used to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one from whom the same are held.

It further provides that:

> It shall be unlawful for any person, including but not limited to any clearing agency of a contract market and any depository, that has received any money, securities, or property for deposit in a separate account as provided in paragraph (2) of this section, to hold, dispose of, or use any such money, securities, or property as belonging to the depositing [FCM] or any person other than the customers of such [FCM].

The Commission's segregation requirements are set forth in Regulations 1.20–1.30, 1.32 and 1.36, 17 CFR 1.20–1.30, 1.32 and 1.36. They provide, among other things, that a customer's funds: must be accounted for separately by the FCM; may not be commingled with the FCM's own funds or those of any other person; must be available immediately upon demand; and must be used only to margin or to secure contracts traded on or subject to the rules of a designated contract market. Neither Section 4d of the Act nor these regulations address the holding of customer funds offshore or in foreign currencies.

Interpretation No. 12 permits the deposit of U.S. customer funds offshore, subject to conditions intended to ensure consistency with the segregation requirements of the Act and ''generally to prevent the dilution of customer funds held in segregation in the United States.'' Accordingly, Interpretation No. 12 limits the circumstances under which funds may be held offshore; requires specified qualifications for foreign depositories; requires a certain

[1] See Vision and Strategies for the Future: Facing the Challenges of 1997 through 2002, published by the Commission (September 1997).

[2] 7 U.S.C. 1 *et seq.*

[3] See Commodity Exchange Authority Administrative Determination No. 238 (September 4, 1974).

[4] 53 FR 46911 (November 21, 1988).

amount of funds to be held in dollars in the U.S.; and requires that customers whose funds are deposited offshore subordinate their claims against segregated funds to those of customers whose funds are deposited in the U.S. or in other currencies.

More specifically, Interpretation No. 12 permits customer funds, including funds of U.S. customers, to be held offshore subject to the following conditions:

1. With respect to U.S.-domiciled customers, only funds held for trading contracts that are priced and settled in a foreign currency may be held in foreign depositories;

2. FCMs must segregate sufficient funds in dollars in the U.S. to meet all dollar-denominated obligations to customers;

3. Customer funds may be held only in the country of origin of the applicable currency or in a country with which the Commission has an information sharing arrangement;

4. Foreign depositories must meet Commission Regulation 30.7(c) criteria;[5] and

5. FCMs must obtain from customers a subordination agreement whereby the customer authorizes the deposit of its funds in a foreign depository and subordinates its claim thereto to the claims of customers whose accounts are denominated in U.S. dollars.[6] The subordination agreement would be activated in the event the FCM is placed in bankruptcy or receivership and there are insufficient customer funds available for distribution to satisfy all customer claims.

2. Bankruptcy Regulation

Subchapter IV of Chapter 7 of the Bankruptcy Code (11 U.S.C.) accords customers of an insolvent commodity broker priority in the distribution of customer property:

> The trustee shall distribute customer property ratably to customers on the basis and to the extent of such customers' allowed net equity claims, and in priority to all other claims, except claims * * * attributable to the administration of customer property.

In 1983, the Commission adopted Part 190 of its regulations to implement the Bankruptcy Reform Act of 1978.[7] Part 190 recognizes different account classes to permit ''the implementation of the principle of pro rata distribution so that the differing segregation requirements with respect to different classes of accounts benefit customer claimants based on the class of account for which they were imposed.''[8] The account classes are: futures accounts, foreign futures accounts, leverage accounts, commodity options accounts, and delivery accounts.[9] Futures and options accounts that trade foreign currency contracts, contain foreign currencies, or are located offshore are not recognized as a separate account class. The subordination agreement required by Interpretation No. 12, in effect, results in these accounts being treated as belonging to separate account classes in the event of an FCM's bankruptcy.

3. Banking Regulation

Prior to 1988, the Board of Governors of the Federal Reserve had a policy discouraging banks in the U.S. from accepting deposits of foreign currencies. Shortly after the Commission issued Interpretation No. 12, in order to address the needs of contracts settled in foreign currencies, the Board changed its policy and began to allow banks located in the U.S. to accept foreign currency deposits.

Regulation Q (12 CFR § 217) generally prohibits U.S. banks from paying interest on demand deposits.[10] Regulation Q does not prohibit foreign branches of U.S. banks from paying interest on demand deposits, provided that the U.S. bank does not expressly guarantee repayment of the deposits in the U.S.

B. Developments Since the Issuance of Interpretation No. 12

At the time Interpretation No. 12 was issued, the Commission stated its intention to ''monitor experience under this interpretation * * * to alter or supplement the conditions for keeping segregated funds offshore as such experience renders advisable.'' Various developments since 1988 make it appropriate to revisit this area. First, as noted above, when Interpretation No. 12 was issued, U.S. banks generally did not hold foreign currencies in the U.S. Therefore, Interpretation No. 12 does not explicitly address risks related to customer funds denominated in foreign currencies and held in the U.S.[11] Second, since 1988, U.S. contract markets have listed many futures and option contracts that are priced and settled in foreign currencies. The use of foreign currencies in connection with trading these contracts, particularly the use of currencies of countries that are major financial centers, has become commonplace. Third, trading volume in the competing offshore and over-the-counter markets has increased dramatically since 1988, raising competitiveness concerns in the industry. Fourth, industry sources have expressed the view to Commission staff that the subordination requirement of Interpretation No. 12 is cumbersome, unnecessarily penalizes customers who deposit foreign currencies with FCMs, and is an impediment to access to the U.S. futures markets for non-U.S. customers who may be reluctant to subordinate their claims.[12]

Finally, several FCMs and a clearing organization have requested permission to maintain in offshore accounts customer funds denominated in foreign currencies. The FCMs represented that holding funds offshore would better serve the needs of their foreign-domiciled clientele. The clearing organization contended that it could draw interest on customer funds held offshore, which would permit it to be more competitive. Interpretation No. 12 allows customer funds to be held offshore only if ''such funds are used to margin, guarantee, or secure positions in a contract traded on a domestic contract market that is priced and settled in a foreign currency'' and only with the express consent and subordination of the customer. Moreover, Interpretation No. 12 clearly states the Commission's belief that ''some constraints are necessary to prevent the transfer of funds overseas for reasons unrelated to trading in the relevant contracts.'' Accordingly, a clearing organization could not move and maintain customer funds offshore except as permitted by Interpretation No. 12 or unless it

[5] These criteria are detailed in Part III C *infra*.

[6] Commission staff has interpreted this requirement to apply with respect to funds denominated in foreign currencies, wherever held. See, fn. 11 *infra* and accompanying text.

[7] 48 FR 8716 (1983).

[8] See Part 190 proposal, 46 Fed. Reg. 57535 (1981) (the ''Proposing Release'').

[9] Commodity options accounts do not constitute a separate class to the extent they relate to transactions subject to regulation under the Act and the Commission's regulations, because FCMs are permitted to commingle funds required to be segregated. Section 4d(2) of the Act, 7 U.S.C. 6d(2); Commission's Regulations 190.01 and 1.3(hh).

[10] The Commission requirement that customer funds be available upon demand results in these funds being categorized by banks as demand deposits. A bill to repeal the prohibition on the payment of interest on demand deposits was introduced by Rep. Metcalf on July 31, 1997, and is currently pending. See H.R. 2323, 105th Cong., 1st Sess. (1997).

[11] However, Commission staff has interpreted the subordination requirement of Interpretation No. 12 to be applicable to customer funds denominated in foreign currencies, wherever held.

[12] Interpretation No. 12 ''has the effect of making overseas customers less willing to use U.S. futures markets because it imposes a subordination requirement on foreign currency deposits that is obsolete in today's global economy * * *.'' (Letter dated November 4, 1997, to the Commission from the Chicago Mercantile Exchange). A number of brokerage firms interviewed by Commission staff in connection with reviewing the requirements of Interpretation No. 12 expressed the same view.

obtained relief from the requirements thereof.[13]

II. Policy Considerations

A. Goals

The protection of customer funds is a cornerstone of the Act and the Commission's regulations. Typically, U.S. market participants deposit dollars or dollar-denominated assets with their FCM. These assets are held in segregation in the U.S. Increasingly, however, there appears to be a need or desire to hold customer funds overseas or in non-U.S. dollar denominations.

Historically, the Commission has proceeded with caution in allowing customer funds to be held offshore or denominated in foreign currencies and intends to continue to do so. Nevertheless, at this juncture, the Commission wishes to take a comprehensive look at the needs and practices of the industry in evaluating possible revisions of its requirements. Three distinct questions must be considered: (1) Whether and under what circumstances customers may choose to have segregated funds deposited offshore or denominated in foreign currencies; (2) whether and under what circumstances FCMs may choose to hold segregated funds offshore or in foreign currencies; and (3) whether and under what circumstances clearing organizations may choose to hold segregated funds offshore or in foreign currencies.

In each case, the extent of the need or desire for holding customer funds offshore or in foreign currencies must be assessed against the related risks. Risk limiting measures must be considered, and the question of who should bear the risks that cannot be eliminated must be explored. One of the premises of Interpretation No. 12 is that customers whose accounts are denominated in U.S. dollars must be insulated from the risks resulting from an FCM holding funds offshore or in foreign currencies. The continuing viability of this premise has been questioned by some industry participants.

The Commission encourages commenters to describe their current practices and to provide a detailed analysis of the reasons for their desire or need to keep segregated funds offshore. Commenters should discuss related risks and how these risks should be addressed for the protection of customers. Commenters should also explain how revisions to the current requirements could affect their business.

B. Risks

Holding segregated funds offshore or in foreign currencies creates three types of risk:

—currency risk;
—depository risk; and
—sovereign risk.

Currency risk arises when an obligation is denominated in one currency and the asset held to meet that obligation is in another currency. Fluctuations in exchange rates can cause the amount of the obligation to change at a different rate than the value of the asset, thereby resulting in insufficient funds in segregation to meet the obligation.

Depository risk is the danger that a depository holding customer funds may be unable or unwilling to release those funds on demand. This risk, of course, exists with domestic depositories but contains additional elements overseas, particularly insofar as the Commission's knowledge of, or authority over, foreign depositories may be less.

Sovereign risk is the chance that a foreign government might take action preventing a depository or an FCM from releasing customer funds despite the requirements of Section 4d of the Act.

III. Potential Approaches

This part of the concept release sets forth a number of possible methods to address the risks described above and the issues that have arisen since Interpretation No. 12 was issued. Some of the listed methods are existing requirements; others are measures suggested by industry members or devised by Commission staff. The listing of potential approaches in this concept release is designed only to elicit public comment. It is not intended as an endorsement or to indicate a willingness on the part of the Commission to adopt these approaches or to abandon existing provisions.

The Commission requests commenters to indicate their preferred alternatives from among those listed or to suggest other methods. The alternatives are organized into six categories. These categories represent potential avenues for dealing with the risks described above. They are:

—the permissible denominations of FCMs' obligations to their customers;
—the permissible denominations of assets held in segregation;
—the permissible locations of segregated funds;
—the qualifications of non-U.S. depositories;
—the segregation and net capital treatment of customer funds held offshore or in foreign currencies; and
—the bankruptcy treatment of these funds.

The first five categories above primarily involve steps that could reduce risks. The last category involves steps that could be taken to allocate losses equitably in the event that shortfalls in segregated funds nevertheless occur. The list of potential choices in each area of intervention generally proceeds from most restrictive to least restrictive. Each option may address more than one type of risk, and choices within one section are not necessarily mutually exclusive. Moreover, a choice under one area may affect a choice in another. For example, choices under section C, relating to countries where segregated funds may be held, must be made in conjunction with related requirements under section E, regarding the segregation treatment of customer funds. Each section is followed with a brief discussion of the potential impact of listed choices. A variety of overall approaches can be constructed by selecting different combinations.

Because the Commission generally favors an approach that emphasizes prophylactic measures, most listed choices are intended to reduce relevant risks. However, the Commission recognizes that all risks cannot be prevented. Accordingly, possible procedures also are included to alleviate the consequences of residual risks, *i.e.*, any risks that cannot be effectively eliminated.

A. Permissible Denominations of Obligations

1. Alternatives

An FCM's obligation to a customer may be denominated in a currency other than U.S. dollars:

a. In connection with contracts priced and settled in that currency.

b. (i) In connection with contracts priced and settled in that currency; or (ii) if the customer is domiciled overseas.

c. If the currency is acceptable for margin purposes on a U.S. contract market.

d. With the customer's written authorization.

e. Other, please specify.

2. Discussion

As noted above, because currencies fluctuate at different rates, where obligations are denominated in one currency and assets held to meet these obligations are denominated in another,

[13] Indeed, on a case by case basis, the Division of Trading and Markets has permitted customer funds to be maintained by clearing organizations in London and Mexico City.

an imbalance may result between assets and obligations resulting in insufficient funds in segregation to meet the obligations. Accordingly, the denomination of both assets and obligations to customers must be considered.

Discussions with participants in the industry indicate that, under current practices, the agreement signed by a customer opening an account with an FCM usually specifies either that obligations to the customer are in U.S. dollars, unless otherwise agreed, or that the customer will be paid in the currency it deposits or in which any earnings are accrued. The discussions also indicate, however, that these principles are not uniformly applied and indeed that some FCMs may not have a clear agreement with their customers regarding the currencies in which customers are to be paid. This should be clarified as it may ultimately dictate whether gains and losses resulting from currency fluctuations will accrue to, or be borne by, the FCM or its customers. The choices made for this section must be considered in close conjunction with those made for the next section relating to permissible denomination of assets.

B. Permissible Denominations of Assets

1. Alternatives

Assets held in segregation may be denominated in a foreign currency only:

a. In connection with contracts priced and settled in that currency.

b. (i) In connection with contracts priced and settled in that currency; or (ii) if the customer is domiciled overseas.

c. If the currency is acceptable for margin purposes on a U.S. contract market.

d. With the customer's written authorization.

e. Other, please specify.

2. Discussion

Current Interpretation No. 12 permits the deposit offshore of funds ''used to margin, guarantee, or secure positions in a contract traded on a domestic contract market that is priced and settled in a foreign currency or accrue to such a customer as a result of positions in such contracts.'' Provided that FCMs recompute the asset/obligation balance on a daily basis, any choice above would effectively address currency risk. Absent a requirement to rebalance asset/obligations daily, only choice (a) could result in a ''natural'' balance. The other choices would not ensure the continuous balance of assets and obligations.[14] Commenters should indicate whether alternatives (b), (c), and (d) should be limited further to specific currencies.

C. Permissible Locations of Segregated Funds

1. Alternatives

Segregated funds may be held at an approved depository in any of the following geographic locations (commenters should choose the appropriate combination):

a. The U.S.

b. The country of origin of the currency in which the related contract is priced and settled.

c. A country with which the Commission has an information sharing arrangement.[15]

d. For a limited period of time, the country in which the customer is domiciled, and only for operational ease in receiving and disbursing funds from and to customers living in foreign countries and trading on U.S. contract markets.

e. Without time limitation, the country of domicile of the customer.

f. The G7 countries (plus Switzerland).[16]

g. Some or all of the twenty-four countries that the Securities and Exchange Commission (''SEC'') considers as major money centers.[17]

h. Other, please specify.

2. Discussion

Choice (a), requiring funds to be held in the U.S., is more restrictive than the current Interpretation No. 12 approach. This choice is more viable now than it was at the time Interpretation No. 12 was issued because, as noted above, in the interim, the Federal Reserve changed its policy concerning foreign currency deposits in the U.S. Nevertheless, the Commission recognizes that it could impose additional costs on the industry. The requirement that segregated funds be held in the country of origin of the currency (choice (b)) is a current Interpretation No. 12 requirement. Under choice (b), an increase in the number of currencies in which contracts traded in U.S. contract markets settle would automatically trigger additional countries as permissible segregated funds locations.[18] This choice may result in countries being added and taken off the list of permissible locations based on contract designations at any given time.

Choice (c) also reflects current Interpretation No. 12. In 1988, the Commission had an information sharing arrangement with the Australian National Companies and Securities Commission and with the United Kingdom Securities and Investments Board. The Commission currently has information sharing or cooperation arrangements with regulators of over fifteen foreign jurisdictions. While the existence of a framework of cooperation with the Commission is a positive factor, other factors, such as economic and political soundness of the country, also are important. Choices (f) and (g) would limit possible depository countries to countries generally considered to be secure and to have sophisticated regulatory regimes. Alternative (e) would permit FCMs to hold customer funds offshore for operational convenience in any country where an FCM's customer is domiciled.

D. Qualifications of Depositories

1. Alternatives

To qualify to hold segregated funds, a depository must provide the depositing FCM the segregation acknowledgment required by Commission Regulation 1.20 and:

a. Must be located in the U.S.

b. If located offshore, must have a branch or correspondent in the U.S. which guarantees repayment in the U.S. in the event the foreign depository fails to fulfill its obligation for any reason.

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[14] However, potential imbalances would be mitigated by other measures such as a requirement that FCMs take a haircut in their net capital computation for any unhedged foreign currencies. See Part III E *infra.*

[15] The Act enables the Commission to enter into various types of cooperative arrangements with foreign futures authorities. See, *e.g.,* Sections 8(a)(1) and 12(f)(2) of the Act.

[16] The G7 is a group of industrialized countries. It includes: the U.S., Canada, France, Germany, Italy, Japan and the United Kingdom. For purposes of determining major money centers, Switzerland is often added to the list.

[17] SEC no action letter from Michael Macchiaroli to Douglas Preston of the Securities Industry Association [1992 Transfer Binder], SEC Rep. (CCH) ¶ 76,245 (August 21, 1992). Subject to certain conditions, the Market Regulation Division would not recommend any enforcement action against broker dealers who hold money market instruments in a ''major money market'' if they do not take a one hundred percent haircut on these instruments in calculating net capital under Rule 15c3–1 of the Securities Exchange Act of 1934. The letter lists twenty-four countries that are considered as major money markets. These countries are: Australia; Austria; Belgium; Canada; Denmark; Finland; France; Germany; Greece; Hong Kong; Ireland; Italy; Japan; Luxembourg; the Netherlands; New Zealand; Norway; Portugal; Singapore; Spain; Sweden; Switzerland; the United States; the United Kingdom.

[18] When Interpretation No. 12 was issued, no contracts priced and settled in a foreign currency were traded on U.S. contract markets. However, two applications were pending before the Commission for designation of such contracts. Currently, many contracts that margin and settle in foreign currencies are traded on U.S. contract markets.

c. If located offshore, must have a branch or correspondent in the U.S. which guarantees repayment in the U.S. in the event the foreign depository fails to fulfill its obligation for any reason other than sovereign action.

d. If located offshore, must be an FCM or a designated bank or trust company as defined in Advisory 87–5.[19]

e. Some combination of the elements of alternatives (a) through d.

f. Other, please specify.

2. Discussion

Alternative (d), which relies on the commercial paper or long term debt rating of foreign depositories, is the current Interpretation No. 12 requirement. Alternative (b) would effectively address location risk (both sovereign and depository risks) by requiring a repayment guarantee in the U.S. whatever the cause of the shortfall. However, as noted above, it appears that banks would not be allowed to pay interest if an unconditional guarantee were given. Accordingly, choice (b) would be unsatisfactory where customer funds are held offshore for the purpose of yielding interest. Alternative (c) would address only depository risk.

E. Segregation and Net Capital Treatment

1. Alternatives

a. Customer funds must be segregated only in accounts payable in the U.S. No account located or payable outside the U.S. is considered an acceptable segregated deposit.

b. A percentage of excess segregated funds on deposit in non-U.S. locations (*e.g.*, ten to twenty-five percent) may be recognized as good segregated assets.

c. Only funds received from foreign-domiciled customers may be held offshore. However, they will not be considered to be properly segregated.

Segregated funds may be held offshore and/or in foreign currencies:

d. Provided that sufficient funds are held in each currency to meet all obligations in that currency, as computed daily.

e. Provided that sufficient U.S. dollars are segregated in a U.S. depository to meet all U.S. dollar obligations. To the extent other currencies are segregated in foreign depositories, excess U.S. dollars (*e.g.*, 10%) must be held in the U.S. as a cushion.

f. Provided that alternative sources of funding such as dedicated lines of credit, in a form acceptable to the Commission, are available to cover shortfalls or delays in payment.

g. Some combination of the elements of alternatives (c) through (e).

h. Other, please specify.

2. Discussion

Under alternative (a), funds deposited by customers for trading on U.S. contract markets would be held in the U.S. only. This is founded on the proposition that futures and options positions are carried in the U.S., and therefore, the need for these funds, for variation settlements and for standing margin is in the U.S. Having these funds in the U.S. ensures that the funds will be available and subject to U.S. law in the event of insolvency and that they will be distributed according to the Bankruptcy Code and the regulations thereunder.

Alternative (b) would recognize a percentage of excess segregated funds held offshore as properly segregated. All other segregated funds would be required to be held in the U.S. Alternative (c) would set no limit on the amount of foreign-domiciled customer funds held in offshore locations; however, these funds would not be recognized as good segregated funds. Under alternative (d) customer funds could be properly segregated offshore, subject to daily balancing of assets and obligations in each currency. This would address currency risk, but not location risk. Under alternative (e), all dollar obligations would be matched by U.S. dollars held in segregation in the U.S. An FCM could hold foreign currencies in segregation. As a protection against currency rate fluctuations, however, the FCM would be required to hold additional U.S. dollars in the U.S. Alternatives (a) through (e) all are intended to prevent the occurrence of shortfalls. Alternative (f) provides a method to cover shortfalls should they occur. As noted, these alternatives are not necessarily mutually exclusive.

F. Bankruptcy Treatment[20]

1. Alternatives

a. Customers whose funds are held offshore or in foreign currencies must subordinate their claims against these funds to those of customers whose funds are segregated in the U.S. and in U.S. dollars in the same manner as under current Interpretation No. 12.

b. Customers whose funds are held offshore or in foreign currencies must subordinate their claims against these funds to those of customers whose funds are segregated in the U.S. and in U.S. dollars in the same manner as in Appendix B to the Commission's Bankruptcy regulations.[21]

c. Customers whose funds are held offshore or in foreign currencies must subordinate their claims against these funds to claims of customers whose funds are segregated in the U.S. and in U.S. dollars in the event there are shortfalls as a result of sovereign action.[22]

d. In the event of bankruptcy of an FCM or foreign depository, segregated funds in each currency will constitute a separate pool, and each customer will recover to the extent that there are funds in the pool against which the customer holds a claim.

e. In the event of bankruptcy of an FCM or foreign depository, all segregated funds will constitute a single pool and will be distributed pro rata without regard to the location or denomination of these funds.

f. Other, please specify.

2. Discussion

The majority of measures considered earlier in this release were intended to minimize risks. This section deals with apportioning losses should they occur. Alternative (a) is the requirement of current Interpretation No. 12. As noted

[19] Pursuant to CFTC Advisory 87–5 (1987–1990 CCH Transfer Binder ¶ 23,997), FCMs are required to disclose on their Form 1–FR the identity of offshore depositories. Any bank or trust company located outside the U.S. whose commercial paper or long term debt is rated in one of the two highest rating categories by Standard & Poors Corporation or Moody's Investors Service, Inc. is deemed automatically recognized. FCMs must submit an application for recognition of other non-U.S. located banks and trust companies not meeting this standard. Such banks or trust companies are deemed recognized unless the Division gives the FCM notice to the contrary within 60 days following receipt of the application. No such application has been received.

[20] As noted above, the special provisions of the Bankruptcy Code applicable to the bankruptcy of commodity brokers generally require that in the event of the bankruptcy or insolvency of an FCM all segregated funds be distributed on a pro rata basis to customers of the same class.

[21] 17 C.F.R. 190 Appendix B. Appendix B, which governs the distribution of property where a bankrupt FCM holds cross-margin funds, while intended to assure that non-cross-margining customers of such an FCM will not be adversely affected by a shortfall in the pool of cross-margining funds, modified the applicable distributional rules such that the required subordination is more limited.

[22] Some industry members believe that the risk that a foreign government would freeze deposits within its borders is ''remote, especially when dealing with the major global currencies.'' They recommend that the Commission exempt deposits of the major currencies, wherever held, from all aspects of Interpretation No. 12. See letter dated October 16, 1997, to Chairperson Born from the Chicago Board of Trade.

above, to ensure that in the event of an FCM bankruptcy customers whose funds are held in the U.S. and in U.S. dollars will not share pro rata in possible shortfalls in customer funds held offshore, Interpretation No. 12 requires that customers who deposit funds denominated in a foreign currency subordinate their claims to those of customers with U.S. dollar claims. Alternative (b) would use the same device in a manner that would be less adverse to customers with funds denominated in foreign currencies. Under alternative (c), the subordination would be activated only in the event shortfalls resulted from sovereign action. Other losses would be shared pro rata.

Alternative (d) would pay each customer a pro rata share of the currency pool(s) against which it had a claim. In certain circumstances, this alternative could be inequitable to customers with foreign-denominated claims. For example, the bankruptcy of a depository could result in shortfalls in foreign currencies of the type held by the depository. Under this alternative, the shortfalls would be shared only by customers with claims against those currencies. However, some of these customers may not have had funds in that depository or any responsibility for its selection.

As noted above, the Bankruptcy Code and regulations require pro rata sharing among customers in each account class. Accordingly, this alternative would require the Commission to amend its bankruptcy regulations to define each currency pool as a separate account class. By sharing all available customer funds among all customers without regard to the segregation locations, alternative (e) furthers the view that shortfalls should be shared among all customers without regard to the denomination or location of customer funds.

IV. A Specific Approach

To illustrate the interrelationship of choices under the various headings and to assist the Commission further in reaching a resolution of the issues, staff has prepared a specific formulation combining choices from each category.[23] The Commission is not endorsing this approach at this time, but the Commission believes that receiving comments on it would provide a valuable supplement to the other comments. This approach would address the concern that current regulatory standards may impede access to the U.S. futures market by eliminating the subordination agreement currently required by Interpretation No. 12. To facilitate the receipt of funds from offshore customers, this approach, however, would permit FCMs to maintain operating accounts in non-U.S. depositories. Under this approach:

—Funds used by an FCM to meet its obligations to customers who trade on U.S. contract markets must be segregated in accounts payable in the U.S. That is, no account located or payable outside of the U.S. would be considered an acceptable segregated depository. In addition:

—As an operational convenience, an FCM would be permitted to receive commodity margin funds into non-U.S. accounts from customers located outside the U.S. However, funds in these accounts would not be recognized as segregated assets. This means that customer funds in accounts located outside of the U.S. would not have to be transferred to the U.S. An FCM would be considered in compliance with the segregation rules as long as there were sufficient funds segregated in the U.S. to cover its obligations to all of its customers, including the non-U.S. customers whose funds had not yet been transferred to the U.S.

—A deposit of any customers' funds into an account outside of the U.S. would result in an increase in the FCM's segregated liability to its customers. The FCM's excess segregated funds would be used to cover the credit to the customer's account. This coverage must be made immediately upon receipt of the funds in the non-U.S. account.

—An FCM would be permitted to recognize as segregated assets foreign currencies credited to the FCM in segregated foreign currency accounts with banks located in the U.S. as long as the account balances were payable in the U.S. The non-U.S. currencies which would be recognized as segregated assets would be limited to those foreign currencies which would have been identified as acceptable for margin purposes by the contract markets on which the FCM's customers trade.

—An FCM must take appropriate action to maintain a balance between the currencies it had in segregated accounts and its obligations to customers denominated in the same foreign currency. To achieve this, an FCM must perform a daily calculation of the balance between its foreign currency deposits and its obligations to its customers in those currencies, including U.S. dollars. This calculation must be performed as part of the daily segregation calculation. Imbalances must be corrected by the day following the ''as of'' date of the calculation. An appropriate capital charge must be taken on any imbalances, pursuant to the Commission's net capital rule, regardless of any rebalancing achieved the following day.

This approach would not compel an FCM to transfer any funds into the U.S., provided the FCM had sufficient excess segregated assets in the U.S. FCMs could maintain accounts in non-U.S. locations and use such accounts to take in deposits from foreign-domiciled customers and to make disbursements. However, the funds contained in these accounts would not count towards meeting the FCM's segregated liability. Although funds in these accounts would not qualify as good segregated funds, they could qualify for net capital purposes, provided the accounts met the requirements of the net capital rule, which are less stringent than those of the segregation rule.

V. Request for Comment

The Commission requests comment on the need for and effectiveness of the various alternatives and, in particular, on the ''specific approach.'' In formulating their choices, commenters should consider the following factors: (a) FCMs increasingly have a customer base offshore; (b) U.S. banks are currently prohibited by the Board of Governors of the Federal Reserve from paying interest on demand deposits while unguaranteed offshore deposits may yield interest; (c) some U.S. depositories are reluctant to hold a substantial amount of foreign currencies; (d) as the volume of contracts that are priced and settled in foreign currencies increases, the need to deposit customer funds denominated in foreign currencies also increases; (e) the enforceability of the subordination agreement has not been tested and is not clear in the event of a bankruptcy adjudicated by a non-U.S. court; and (f) other steps outside the Commission's purview could help reduce the risks related to customer funds held offshore or in foreign currencies, such as steps to facilitate the movement of foreign currencies through the Fedwire.

The Commission encourages commenters to provide information on their current business practices and how they could be affected by the methods listed in this release and any additional

[23] This approach combines, with some modifications, choices (A)(1)(c), (B)(1)(c), (C)(1)(a), (D)(1)(a), (E)(1)(a), and (F)(1)(a).

methods they propose. The Commission also requests comment on the practicality of the various methods.

Finally, the Commission requests comment on whether it is appropriate to allow exchanges and/or clearing organizations to hold customer funds offshore without the customers' express authorization and without a direct operational necessity. If so, commenters should indicate what conditions and limitations should be imposed. The Commission welcomes any cost-benefit analysis commenters care to provide in support of their choices.

The Commission requests that commenters, in making their choice among the proposed alternatives or in indicating other alternatives, clearly indicate whether the provision should apply at the FCM level and/or at the clearing level. The Commission will give serious consideration to the comments in determining an appropriate manner in which to revise the requirements set forth in Interpretation No. 12. The Commission wishes: (a) To facilitate access to the United States markets for the growing international customer base using them; (b) to reduce the regulatory burden, where practicable, on FCMs and clearing organizations that accept customer deposits in foreign denominations and use foreign depositories; and (c) to maintain the safety of customer funds.

Issued in Washington, DC on December 23, 1997, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–33955 Filed 12–29–97; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Wednesday, January 28, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Objectives.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–34062 Filed 12-24-97; 11:12 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Thursday, January 29, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–34068 Filed 12–24–97; 11:12 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Statement of Claimant Requesting Recertified Check; DD Form 2660; OMB Number 0730–0002.

Type of Request: Reinstatement.

Number of Respondents: 315,000.

Responses per Respondent: .1

Annual Responses: 315,000.

Average Burden per Response: 5 minutes.

Annual Burden Hours: 26,250.

Needs and Uses: DD Form 2660, ''The Statement of Claimant Requesting Recertified Check,'' is used to ascertain pertinent information needed by the Department of Defense in order to reissue checks to payees, if the checks have not been negotiated to financial institutions within one year of the date of their issuance, when an original check has been lost, not received, damaged, stolen, etc. the form will be completed by the payee who was issued the original check. The information provided on this form will be used in determining whether a check may be reissued to the named payee.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: December 22, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–33786 Filed 12–29–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Notice of Closed Meeting

AGENCY: Defense Intelligence Agency; Joint Military Intelligence College; DoD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Joint Military Intelligence College Board of Visitors has been scheduled as follows:

DATES: Monday 12 January 1998, 0800 to 1800; and Tuesday, 13 January 1998, 0800 to 1200.

ADDRESSES: Joint Military Intelligence College, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Mr. A. Denis Clift, President, DIA Joint Military Intelligence College, Washington, DC 20340–5100 (202/231–3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed. The Board will discuss several current critical intelligence issues and advice the Director, DIA, as to the successful accomplishment of the mission assigned to the Joint Military Intelligence College.

Dated: December 22, 1997.

L.M. Bynum,

Alternate OSD Federal Liaison Officer, DoD.

[FR Doc. 97–33788 Filed 12–29–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Partnership Council Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense (DoD) announces a meeting of the Defense Partnership Council. Notice of this meeting is required under the Federal Advisory Committee Act. This meeting is open to the public. The topics to be covered will include the DoD Personnel System Initiative concept and other matters related to the enhancement of Labor-Management Partnerships throughout DoD.

DATES: The meeting is to be held January 27, 1998, in room 1E801, Conference Room 7, the Pentagon, from 1:00 p.m. until 3:00 p.m. Comments should be received by January 20, 1998, in order to be considered at the January 27 meeting.

ADDRESSES: We invite interested persons and organizations to submit written comments or recommendations. Mail or deliver your comments or recommendations to Mr. Kenneth Oprisko at the address shown below. Seating is limited and available on a first-come, first-serve basis. Individuals wishing to attend who do not possess an appropriate Pentagon building pass should call the below listed telephone number to obtain instructions for entry into the Pentagon. Handicapped individuals wishing to attend should also call the below listed telephone number to obtain appropriate accommodations.

FOR FURTHER INFORMATION CONTACT:

Mr. Kenneth Oprisko, Chief, Labor Relations Branch, Field Advisory Services Division, Defense Civilian Personnel Management Service, 1400 Key Blvd, Suite B–200, Arlington, VA 22209–5144, (703) 696–6301, ext. 704.

Dated: December 22, 1997.

L.M. Bynum,

Alternate OSD Federal Register Officer, Department of Defense.

[FR Doc. 97–33783 Filed 12–29–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DoD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group C (Electro-Optics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday and Thursday, January 21–22, 1998.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT:

Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and laser. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Public Law 92–463, as amended (5 U.S.C. App. section 10(d)(1944)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1944), and that accordingly, this meeting will be closed to the public.

Dated: December 22, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–33784 Filed 12–29–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DoD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, February 18, 1998.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Eliot Cohen, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. Section 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: December 22, 1997.

L.M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–33785 Filed 12–29–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DoD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, February 17, 1998.

ADDRESSES: The meetings will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Eric Carr, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Public Law 92–463, as amended (5 U.S.C. App. Section 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: December 22, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–33787 Filed 12–29–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on January 6, 1998; January 13, 1998; January 20, 1998; and January 27, 1998, at 10:00 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: December 22, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–33789 Filed 12–29–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 2, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 22, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.

Title: Follow-up Study to the National Evaluation of Homeless Children and Youth Program.

Frequency: One time.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 193

Burden Hours: 209

Abstract: This study will follow-up on a previous evaluation of state and local efforts to serve the educational needs of homeless children and youth that was conducted during the first few months of 1994 and released in 1995. This follow-up study will gather data on the activities being conducted under the McKinney Act by state and local educational agencies to serve the educational and related needs of homeless children and youth, and on changes that have occurred since the program was reauthorized by the Improving America's Schools Act in 1994. Respondents to the survey are State Coordinators of Education for Homeless Children and Youth. School district administrators, school staff, human services providers, McKinney subgrant coordinators, and homelessness liaisons will be interviewed during site visits to LEAs.

[FR Doc. 97–33839 Filed 12–29–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council, and invites people to participate. Notice of this meeting is required under section 685(c) of the Individuals with Disabilities Education Act and is intended to notify the general public of their opportunity to attend the meeting. The meeting will be accessible to individuals with disabilities.

DATE AND TIME: Thursday, January 22, 1998 from 8:00 a.m. to 4:30 p.m., and Friday, January 23, 1998 from 9:00 a.m. to 12:00 noon.

ADDRESS: Columbia Room of the Holiday Inn Capitol, 550 C Street, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Libby Doggett or Kim Lawrence, U.S. Department of Education, 330 C Street, S.W., Room 3080, Switzer Building, Washington, DC 20202–2644. Telephone: 202–205–8428 or 202–205–5507. Individuals who use a telecommunications device for the deaf (TDD) may call 202–205–9754.

SUPPLEMENTARY INFORMATION: The Federal Interagency Coordinating Council (FICC) is established under section 685 of the Individuals with Disabilities Education Act (20 U.S.C. 1484a). The Council is established to: (1) Minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

At this meeting the FICC plans to set priorities for the next three years and discuss changes to the FICC dictated by the 1997 amendments to the Individuals with Disabilities Education Act. Individuals are invited to come and participate in the planning process. Because the sequence of planning activities builds over two days, individuals are asked to participate in all steps and attend the entire meeting. Those who attend the meeting will be asked to take an active role in the planning process and make a commitment to participating in the ongoing work of one of the action teams.

Individuals wishing to participate are asked to call Kim Lawrence at 202–205–8428 (voice) or 202–205–9754 (TDD) by January 12 to reserve a space and request a packet of planning materials. The meeting of the FICC is open to the public and will be physically accessible. Anyone requiring accommodations such as materials in Braille, large print, or cassette please call Kim Lawrence at (202) 205–8428 ten days in advance of the meeting. Interpreters for persons who are hearing impaired will be available.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 330 C Street, S.W., Room 3080, Switzer Building, Washington, DC 20202–2644, from the hours of 9:00 a.m. to 5:00 p.m., weekdays, except Federal Holidays.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–33852 Filed 12–26–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

National Board of the Fund for the Improvement of Postsecondary Education; Meeting

AGENCY: National Board of the Fund for the Improvement of Postsecondary Education, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10 (a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: January 23, 1998 from 9:00 a.m. to 5:00 p.m.

ADDRESSES: Holiday Inn Capitol, 550 C Street, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Charles Karelis, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3100, ROB #3, Washington, D.C. 20202–5175. Telephone: (202) 708–5750. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday).

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTAL INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under Section 1001 of the Higher Education Amendments of 1980, Title X (20 U.S.C. 1131a–1). The National Board of the Fund is authorized to recommend to the Director of the Fund and the Assistant Secretary for Postsecondary Education priorities for funding and approval or disapproval of grants of a given kind.

The meeting of the National Board is open to the public. The National Board will meet on Friday, January 23, from 9:00 a.m. to 5:00 p.m. to provide an overview of the Fund's current competition progress, and to discuss the planning of several other funding initiatives.

The meeting site is accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device or materials in an alternate format) should notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although the Department will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement of Postsecondary Education, Room 3100, Regional Office Building #3, 7th & D Streets, S.W., Washington, D.C. 20202 from the hours of 8:00 a.m. to 4:30 p.m.

Dated: December 22, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–33906 Filed 12–29–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket Nos. 97–80–NG et al.]

Sierra Pacific Power Company et al.; Orders Granting, Transferring and Vacating Blanket Authorizations To Import and/or Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued Orders authorizing, transferring and/or vacating various imports and/or exports of natural gas. These Orders are summarized in the attached appendix.

These Orders are available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities, Docket Room, 3F–056, Forrestal Building, 1000 IndependenceAvenue, S.W., Washington, D.C. 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on December 17, 1997.

Wayne E. Peters,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

APPENDIX.—BLANKET IMPORT/EXPORT AUTHORIZATIONS GRANTED

Order No.	Date issued	Importer/Exporter FE Docket No.	Two-year maximum		Comments
			Import volume	Export volume	
Doe/FE Authority					
1328	11/06/97	Sierra Pacific Power Company 97–80–NG	95 Bcf	.....	Import from Canada.
1331	11/06/97	Texas-Ohio Energy, Inc. (Formerly Texas-Ohio Gas Inc.) 97–95–NG.	100 Bcf	.....	Import from Canada beginning July 11, 1997, through July 10, 1999.
1333	11/10/97	Southern California Edison Company 97–98–NG.	100 Bcf	.....	Import from Canada beginning November 1, 1997, through October 31, 1999.
1334	11/14/97	Vermont Gas Systems, Inc. 97–96–NG	20 Bcf	20 Bcf	Import and export from and to Canada beginning December 23, 1997, through December 22, 1999.
1335	11/19/97	Sumas Cogeneration Company, L.P. 97–101–NG.	17.8 Bcf ...	.....	Import from Canada.
1336	11/20/97	Husky Gas Marketing Inc. 97–97–NG	200 Bcf	.....	Import from Canada.

[FR Doc. 97–33946 Filed 12–29–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–181–000]

Howard/Avista Energy, LLC; Notice of Issuance of Order

December 22, 1997.

Howard/Avista Energy, LLC (Howard/Avista) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, Howard/Avista requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Howard/Avista. On December 15, 1997, the Commission issued an Order Conditionally Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's December 15, 1997 Order granted the request for blanket approval under part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Howard/Avista should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (E) above, Howard/Avista is hereby authorized to issue securities

and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Howard/Avista, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Howard/Avista's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 14, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33836 Filed 12–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–242–000]

North American Energy, Inc., Notice of Issuance of Order

December 22, 1997.

North American Energy, Inc. (North American) submitted for filing a rate schedule under which North American will engage in wholesale electric power and energy transactions as a marketer. North American also requested waiver of various Commission regulations. In particular, North American requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by North American.

On December 10, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by North American should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, North American is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval North American's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 9, 1998. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33837 Filed 12–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–132–000]

Northern Natural Gas Company; Notice of Application

December 22, 1997.

Take notice that on December 15, 1998, Northern Natural Gas Company (Northern), filed in Docket No. CP98–132–000 an application, pursuant to Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing it to construct and operate approximately 9.6 miles of 30-inch pipeline and appurtenances, located in Steele and Rice Counties, Minnesota, in order to provide increased natural gas deliveries to Koch Energy Services (Koch), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that the expanded capacity will be used to provide incremental firm transportation service requested in its recent open season by Koch for use at its Rosemount Refinery. Northern proposes to construct and operate the proposed facilities which will provide additional peak day capacity in its operational Zone EF by approximately 40,000 Mcf of natural gas per day. Northern states that its application is supported by a precedent agreement with Koch covering firm transportation services subscribing the full capacity of the proposed facilities.

Northern estimates the cost of the proposed facilities to be approximately $9.4 million which it anticipates to finance with internally generated funds.

Northern requests approval for rolled-in rate treatment of the expansion costs of the proposed facilities. Northern states that the rate impact to Northern's existing shippers meets the threshold applied by the Commission for a presumption in favor of rolled-in rates and the proposed facilities are integral to Northern's existing transmission system.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before January 12, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing

list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33834 Filed 12–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–136–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

December 22, 1997.

Take notice that on December 16, 1997, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77252, filed in Docket No. CP98–136–000 a request pursuant to Section 7(b) of the Natural Gas Act for approval to abandon a firm transportation service provided for Baltimore Gas and Electric Company (BG&E) under Transco's Rate Schedule FT, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco states that it currently delivers 3,881 Dekatherms of natural gas to BG&E on a firm basis pursuant to Transco's blanket certificate authorized under Part 284(G) of the Commission's Regulations. Transco asserts that it seeks abandonment authorization for the service described above because the subject FT service for BG&E was previously converted from firm sales service to firm transportation service under Transco's Rate Schedule FT pursuant to Transco's revised Stipulation and Agreement in Docket Nos. RP88–68, *et al.*, and that settlement provides that pre-granted abandonment shall not apply to such conversions. It is indicated that by letter dated July 17, 1997, BG&E provided notice to Transco that BG&E was electing to terminate the service agreement effective as of the end of the primary term of the agreement, February 2, 1998. It is further asserted that one shipper, The Municipal Gas Authority of Georgia, submitted a binding nomination for all of such capacity for a primary term of 25 years in an open season that extended from October 21 through November 20, 1997.

Any person desiring to be heard or to make protest with reference to said application should on or before January 5, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (19 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the application is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33835 Filed 12–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP98–131–000, CP98–133–000, CP98–134–000, and CP98–135–000]

Vector Pipeline L.P.; Notice of Applications for Certificates of Public Convenience and Necessity, and for a Presidential Permit and Section 3 Authorization

December 22, 1997.

Take notice that on December 15, 1997, Vector Pipeline L.P. (Vector), 2900 421–7th Avenue SW, Calgary, Alberta, Canada T2P 4K9, filed applications pursuant to Sections 3 and 7(c) of the Natural Gas Act (NGA). In Docket No. CP98–131–000, Vector seeks a Presidential Permit and Section 3 authorization pursuant to Part 153 of the Commission's Regulations. In Docket No. CP98–133–000, Vector seeks a certificate of public convenience and necessity to construct and operate natural gas pipeline facilities under Part 157, Subpart E of the Commission's Regulations. In Docket No. CP98–134–000, Vector seeks a blanket certificate pursuant to 18 CFR Part 284, Subpart G of the Commission's Regulations for self-implementing transportation authority. Finally, in Docket No. CP98–135–000, Vector seeks a blanket certificate for certain blanket construction and operation authorization under 18 CFR Part 157, Subpart F of the Commission's Regulations. Vector's proposal is more fully set forth in the applications which are on file with the Commission and open to public inspection.

Vector is a limited partnership organized under the laws of the State of Delaware. The managing general partner is Vector Pipeline Inc. At present, the only limited partner of Vector is IPL Vector (USA). Vector states that other entities are considering joining the partnership and that vector will supplement its application if this occurs.

In Docket No. CP98–133–000, Vector proposes to construct and operate 269.6 miles of 42-inch pipeline and lease and operate 58.8 miles of 36-inch pipeline.[1] The system will extend from Joliet, Illinois to the U.S.-Canada border near St. Clair, Michigan. In addition, Vector proposes to construct and operate two 30,000 horsepower compressor stations, five meter/regulating stations, and other appurtenant facilities. Vector states that the estimated cost of the proposed facilities is $447 million (including AFUDC and line pack) and will be project financed. Vector states that the capacity of the proposed pipeline is 1.01 MMDth per day. Vector states that it has conducted an open season and has a significant portion of the proposed pipeline's capacity subscribed. Even though Vector has filed under the optional certificate procedures of 18 CFR Part 157, Subpart E, Vector states that it will file voluntarily a summary of the market results, when available.

Vector proposes to provide firm and interruptible service under Rate Schedules FT–1 and IT–1, respectively. Vector states that it has offered both negotiated and recourse rates during the open season. Vector states that it offered a negotiated rate structure in which rates would be set by the formula and under which shippers would agree to not contest certain elements of the cost of service and Vector would agree to not change those elements for the length of the primary term and any extension under firm service agreements. In addition, Vector states that the negotiated rate under ten-year agreements will be 15 percent higher than the rate under fifteen-year agreements. The firm negotiated rate, under a fifteen-year agreement and stated on a 100 percent load factor basis, is estimated to be $0.221 per Dth. In addition, Vector intends to cap this rate over the initial fifteen-year term at $0.237 per Dth.

Vector's proposed recourse rates utilize different cost-of-service components and would allow shippers to take any position with regard to the appropriate cost of service and level of recourse rates. The firm recourse rate in the first year of service, stated on a 100 percent load factor basis, is estimated to be $0.313 per Dth. Both the firm negotiated rate and the firm recourse rate are designed using the straight fixed-variable methodology and a total capacity of 1.01 MMDth per day. Vector states that the interruptible rate has been derived using the 100 percent load factor-equivalent firm transportation rate.

Vector has included a *pro forma* FERC Gas Tariff which, Vector asserts, complies with the Commission's policies established in Order Nos. 636, *et seq*. Vector states that it has made every effort to conform its *pro forma* tariff to the currently applicable GISB standards. Vector does request a waiver of section 154.109(c) of the Commission's regulations so that it may omit the statement of discount policy from its tariff. Vector states that this discount policy has no applicability to Vector.

Vector also is seeking NGA Section 3 authority and a Presidential Permit to construct, own, operate, and maintain approximately 3100 feet of 42-inch pipeline located under the riverbed of the St. Clair River at the U.S.-Canada boundary. Vector will connect with Vector Pipeline Limited partnership, its Canadian affiliate, at the boundary.

Vector requests a preliminary determination on non-environmental issues by June 1998, and final certificate authorization by January 1999. Vector states that this will allow construction to be completed by its proposed in-service date of November 1, 1999.

Any person desiring to be heard or making any protest with reference to said application should on or before January 12, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

However, a person does not have to intervene in order to have comments on any aspect of the proposal considered by the Commission. Instead, a person may submit two copies of such comments to the Secretary of the Commission. Commenters who are concerned about environmental or pipeline routing issues will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 3, 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these applications if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advise, it will be unnecessary for Vector to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33833 Filed 12–29–97; 8:45 am]

BILLING CODE 6717–01–M

[1] Vector is contracting with Michigan Consolidated Gas Company (MichCon) to lease the Belle River Pipeline that runs between Milford and Belle River Mills, Michigan. The lease is for an initial twenty year term, subject to five year renewals and/or an option for Vector to purchase the line if MichCon elects to cancel the lease. MichCon will operate the Belle River Pipeline at the direction of Vector pursuant to the terms of an operating agreement and the rules and regulations of the Commission.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–808–000, et al.]

Louisville Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

December 22, 1997.

Take notice that the following filings have been made with the Commission:

1. Louisville Gas and Electric Company

[Docket No. ER98–808–000]

Take notice that on November 25, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Public Service Electric and Gas Company (''PSE&G'') under LG&E's Open Access Transmission Tariff.

Comment date: January 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Louisville Gas and Electric Company

[Docket No. ER98–809–000]

Take notice that on November 25, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Enron Power Marketing, Inc. under LG&E's Open Access Transmission Tariff.

Comment date: January 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Louisville Gas and Electric Company

[Docket No. ER98–810–000]

Take notice that on November 25, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Cinergy under LG&E's Open Access Transmission Tariff.

Comment date: January 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Louisville Gas and Electric Company

[Docket No. ER98–811–000]

Take notice that on November 25, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Hoosier Energy REC under LG&E's Open Access Transmission Tariff.

Comment date: January 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Louisville Gas and Electric Company

[Docket No. ER98–813–000]

Take notice that on November 25, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and New York State Electric and Gas Company (''NYSEG'') under LG&E's Open Access Transmission Tariff.

Comment date: January 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Louisville Gas and Electric Company

[Docket No. ER98–814–000]

Take notice that on November 25, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Carolina Power & Light Company under LG&E's Open Access Transmission Tariff.

Comment date: January 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Entergy Services, Inc.

[Docket No. ER98–815–000]

Take notice that on November 25, 1997, Entergy Services, Inc. (''Entergy Services''), on behalf of Entergy Louisiana, Inc. (''Entergy Louisiana''), tendered for filing an Interconnection and Operating Agreement between Entergy Louisiana and Georgia Gulf Corporation.

Comment date: January 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Connecticut Valley Electric Company Inc.

[Docket No. ER98–817–000]

Take notice that on November 26, 1997, Connecticut Valley Electric Company Incorporated (Connecticut Valley), tendered for filing the determination of the 1997 payment to Connecticut Valley as provided by the Transmission Service Agreement with Woodsville Water & Light Department (Woodsville) dated December 15, 1975. Such agreement was originally filed in Docket No. ER94–637–000 and designated at Rate Schedule FERC No. 12.

Comment date: January 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Cinergy Services, Inc.

[Docket No. ER98–819–000]

Take notice that on November 26, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Tenaska Power Services Co. (Tenaska).

Cinergy and Tenaska are requesting an effective date of November 15, 1997.

Comment date: January 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Northern States Power Company (Minnesota Company) and Northern States Power Company (Wisconsin Company)

[Docket No. ER98–820–000]

Take notice that on November 26, 1997, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as ''NSP''), tendered for filing an Electric Service Agreement between NSP and North American Energy Conservation (''Customer''). This Electric Service Agreement is an enabling agreement under which NSP may provide to Customer the electric services identified in NSP Operating Companies Electric Services Tariff original Volume No. 4. NSP requests that this Electric Service Agreement be made effective on November 5, 1997.

Comment date: January 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Niagara Mohawk Power Corporation

[Docket No. ER98–831–000]

Take notice that on November 26, 1997, Niagara Mohawk Power Corporation (''NMPC''), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Plum Street Energy Marketing, Inc. This Transmission Service Agreement specifies that Plum Street Energy Marketing, Inc. has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Plum Street Energy Marketing, Inc. to enter into separately scheduled transactions under which NMPC will provide transmission service for Plum Street Energy Marketing, Inc. as the parties may mutually agree.

NMPC requests an effective date of November 1, 1997. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Plum Street Energy Marketing, Inc.

Comment date: January 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Duquesne Light Company

[Docket No. ER98–832–000]

Take notice that on November 28, 1997, Duquesne Light Company (''DLC'') filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated November 1, 1997 with Enron Power Marketing, Inc. under DLC's Open Access Transmission Tariff (''Tariff''). The Service Agreement and Network Operating Agreement adds Enron Power Marketing, Inc. as a customer under the Tariff. DLC requests an effective date of November 1, 1997 for the Service Agreement.

Comment date: January 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Duquesne Light Company

[Docket No. ER98–833–000]

Take notice that on November 28, 1997, Duquesne Light Company (''DLC'') filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated November 1, 1997, with Eastern Power Distribution, Inc. under DLC's Open Access Transmission Tariff (''Tariff''). The Service Agreement and Network Operating Agreement adds Eastern Power Distribution, Inc. as a customer under the Tariff. DLC requests an effective date of November 1, 1997 for the Service Agreement.

Comment date: January 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Duquesne Light Company

[Docket No. ER98–834–000]

Take notice that on November 28, 1997, Duquesne Light Company (''DLC'') filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated November 1, 1997 with Cinergy Resources, Inc. under DLC's Open Access Transmission Tariff (''Tariff''). The Service Agreement and Network Operating Agreement adds Cinergy Resources, Inc. as a customer under the Tariff. DLC requests an effective date of November 1, 1997 for the Service Agreement.

Comment date: January 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Duquesne Light Company

[Docket No. ER98–835–000]

Take notice that on November 28, 1997, Duquesne Light Company (''DLC'') filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated November 1, 1997 with Virginia Electric & Power Company d/b/a EVANTAGE under DLC's Open Access Transmission Tariff (''Tariff''). The Service Agreement and Network Operating Agreement adds Virginia Electric & Power Company d/b/a EVANTAGE as a customer under the Tariff. DLC requests an effective date of November 1, 1997 for the Service Agreement.

Comment date: January 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Duquesne Light Company

[Docket No. ER98–836–000]

Take notice that on November 28, 1997, Duquesne Light Company (''DLC'') filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated November 1, 1997 with MidCon Gas Services Corp. under DLC's Open Access Transmission Tariff (''Tariff''). The Service Agreement and Network Operating Agreement adds MidCon Gas Services Corp. as a customer under the Tariff. DLC requests an effective date of November 1, 1997 for the Service Agreement.

Comment date: January 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Central Power and Light Company and West Texas Utilities Company

[Docket No. ER98–837–000]

Take notice that on November 28, 1997, Central Power and Light Company and West Texas Utilities Company (''WTU'') (collectively, the ''Companies'') tendered for filing service agreements with Texas-New Mexico Power Company and with Williams Energy Services.

The Companies request an effective date of November 1, 1997 for one of the service agreements and of December 1, 1997 for the other two service agreements and, accordingly, seek waiver of the Commission's notice requirements. Copies of this filing were served on the two customers and on the Public Utility Commission of Texas.

Comment date: January 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Long Island Lighting Company

[Docket No. ER98–838–000]

Take notice that on November 28, 1997, Long Island Lighting Company (''LILCO'') filed an Electric Power Service Agreement between LILCO and U.S. Gen Power Services, L.P. entered into on November 20, 1997.

The Electric Power Service Agreement listed above was entered into under LILCO's Power Sales Umbrella Tariff. LILCO has proposed modifications to the Power Sales Umbrella Tariff in its November 3, 1997 filing. Upon the Commission's approval of LILCO's proposed modifications, U.S. Gen Power Services, L.P. will take service subject to the modified Power Sales Umbrella Tariff.

LILCO requests waiver of the Commission's sixty (60) day notice requirements and an effective date of November 20, 1997 for the Electric Power Service Agreement listed above because in accordance with the policy announced in *Prior Notice and Filing Requirements Under Part II of the Federal Power Act,* 64 FERC ¶ 61,139, *clarified and reh'g granted in part and denied in part,* 65 FERC ¶ 61,081 (1993), service will be provided under an umbrella tariff and the Electric Power Service Agreement is being filed either prior to or within thirty (30) days of the commencement of service. LILCO has served copies of this filing on the customer which is a party to the Electric Power Service Agreement and on the New York State Public Service Commission.

Comment date: January 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. PECO Energy Company

[Docket No. ER98–839–000]

Take notice that on November 28, 1997, PECO Energy Company (''PECO'') filed an executed Transmission Agency Agreement between PECO and PG&E Energy Services (hereinafter ''Supplier''). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the ''Form of Transmission Agency Agreement'' submitted to the Commission on October 3, 1997 as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000.

This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: January 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. PECO Energy Company

[Docket No. ER98–840–000]

Take notice that on November 28, 1997, PECO Energy Company (''PECO'') filed an executed Installed Capacity Obligation Allocation Agreement between PECO and PG&E Energy Services (hereinafter ''Supplier''). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the ''Form of Installed Capacity Allocation Agreement'' filed by PECO with the Commission on October 3, 1997 at Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: January 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Ocean Vista Power Generation, L.L.C.

[Docket No. ER98–927–000]

Take notice that on December 4, 1997, Ocean Vista Power Generation, L.L.C. tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1.

Ocean Vista Power Generation, L.L.C. intends to sell electric power at wholesale. In transactions where Ocean Vista Power Generation, L.L.C. sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Oeste Power Generation, L.L.C.

[Docket No. ER98–928–000]

Take notice that on December 4, 1997, Oeste Power Generation, L.L.C. tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective on the later of January 1, 1998 or the closing date of Oeste Power's purchase of the Ellwood Energy Support Facility in California.

Oeste Power Generation, L.L.C. intends to sell electric power at wholesale. In transactions where Oeste Power Generation, L.L.C. sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Mountain Vista Power Generation, L.L.C.

[Docket No. ER98–930–000]

Take notice that on December 4, 1997, Mountain Vista Power Generation, L.L.C. tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1.

Mountain Vista Power Generation, L.L.C. intends to sell electric power at wholesale. In transactions where Mountain Vista Power Generation, L.L.C. sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Alta Power Generation, L.L.C.

[Docket No. ER98–931–000]

Take notice that on December 4, 1997, Alta Power Generation, L.L.C. tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective on the later of January 1, 1998 or the closing date of Alta Power's purchase of the Cool Water Generating Station in California.

Alta Power Generation, L.L.C. intends to sell electric power at wholesale. In transactions where Alta Power Generation, L.L.C. sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33871 Filed 12–29–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4463–000, et al.]

Electric Rate and Corporate Regulation Filings; Northern States Power Company, et al.

December 18, 1997.

Take notice that the following filings have been made with the Commission:

1. Northern States Power Company

[Docket No. ER97–4463–000]

Take notice that on December 16, 1997, Northern States Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. PG&E Energy Trading Services, Energy Trading Corporation

[Docket No. ER95–1614–012]

Take notice that on October 30, 1997, PG&E Energy Services, Energy Trading Corporation (PGE Energy Trading), (formerly, Vanities Energy Corporation), 444 Market Street, Suite 1900, San

Francisco, California 94111, filed a Notification of Change in Status to reflect a change in its upstream ownership and reflect the proposed acquisition by one of its affiliates, USGen New England, Inc., of certain jurisdictional facilities of affiliates of the New England Electric System.

Comment date: December 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. The Wisconsin Public Power Inc. SYSTEM, Complainant, V. Wisconsin Public Service Corp., Respondent

[Docket No. EL98–2–000]

Take notice that on December 3, 1997, The Wisconsin Public Power Inc., SYSTEM (WPPI), filed a complaint under Section 206 of the Federal Power Act against Wisconsin Public Service Corporation (WPS). In the complaint, WPPI alleges that WPS denied firm transmission service to WPPI for service to its native load, while WPS has reserved its entire share of firm interface capacity on the Western Interface purportedly for load serving and reliability needs. The complaint alleges that WPS has engaged in a systematic tariff violation and an anticompetitive withholding of available transfer capacity from the market.

A copy of the complaint was served on respondent WPS and on the Public Service of Wisconsin.

Comment date: January 20, 1998, in accordance with Standard Paragraph E at the end of this notice. Answers to the Complaint shall be filed on or before January 20, 1998.

4. New York State Electric & Gas Corporation

[Docket No. ER98–797–000]

Take notice that on November 26, 1997, New York State Electric & Gas Corporation (NYSEG), tendered for filing a proposed Definition change in its Open Access Transmission Tariff (OAT). The proposed change is as follows:

Current Definition

1.49 Transmission System: The facilities owned, controlled or operated by the Transmission Provider that are used to provide transmission service under part II and part III of the Tariff.

Proposed Definition

1.49 Transmission System: The facilities owned, controlled, identified in Niagara Mohawk Power Corporation FERC Rate Schedule No. 165, or operated by the Transmission Provider that are used to provide transmission service under part II and part III of the Tariff.

Copies of the filing were served upon the person listed on a service list submitted with its filing, including each of its existing wholesale customers and the New York State Public Service Commission.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Boston Edison Company

[Docket No. ER98–799–000]

Take notice that on November 25, 1997, Boston Edison Company (Boston Edison), tendered for filing a Standstill Agreement between itself and Commonwealth Electric Company (Commonwealth). The Standstill Agreement extends through December 31, 1997, the time in which Commonwealth may institute a legal challenge to the 1995 true-up bill under Boston Edison's FERC Rate Schedule No. 68, governing sales to Commonwealth from the Pilgrim Nuclear Station.

Boston Edison requests waiver of the Commission's notice requirement to allow the Standstill Agreement to become effective December 1, 1997.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Boston Edison Company

[Docket No. ER98–800–000]

Take notice that on November 25, 1997, Boston Edison Company (Boston Edison), tendered for filing a Standstill Agreement between itself and The Boylston Municipal Light Department, City of Holyoke Gas & Electric Department, Hudson Light and Power Department, Littleton Electric Light & Water Departments, Marblehead Municipal Light Department, Middleborough Gas and Electric Department, North Attleborough Electric Department, Peabody Municipal Light Plant, Shrewsbury's Electric Light Plant, Templeton Municipal Light Plant, Wakefield Municipal Light Department, West Boylston Municipal Lighting Plant, and Westfield Gas & Electric Light Department (Municipals). The Standstill Agreement extends through December 31, 1997, the time in which the Municipals may institute a legal challenge to the 1995 true-up bill under their respective contracts to purchase power from Boston Edison's Pilgrim Nuclear Station.

Boston Edison requests waiver of the Commission's notice requirement to allow the Standstill Agreement to become effective December 1, 1997.

The Standstill Agreement relates to the following Boston Edison FERC Rate Schedules:

(1) Supplement to Rate Schedule No. 77—Standstill Agreement with Boylston Municipal Light Department
(2) Supplement to Rate Schedule No. 79—Standstill Agreement with Holyoke Gas and Electric Department
(3) Supplement to Rate Schedule No. 81—Standstill Agreement with Westfield Gas and Electric Light Department
(4) Supplement to Rate Schedule No. 83—Standstill Agreement with Hudson Light and Power Department
(5) Supplement to Rate Schedule No. 85—Standstill Agreement with Littleton Electric Light and Water Department
(6) Supplement to Rate Schedule No. 87—Standstill Agreement with Marblehead Municipal Light Department
(7) Supplement to Rate Schedule No. 89—Standstill Agreement with North Attleborough Electric Department
(8) Supplement to Rate Schedule No. 91—Standstill Agreement with Peabody Municipal Light Plant
(9) Supplement to Rate Schedule No. 93—Standstill Agreement with Shrewbury's Electric Light Plant
(10) Supplement to Rate Schedule No. 95—Standstill Agreement with Templeton Municipal Light Plant
(11) Supplement to Rate Schedule No. 97—Standstill Agreement with Wakefield Municipal Light Department
(12) Supplement to Rate Schedule No. 99—Standstill Agreement with West Boylston Municipal Lighting Plant
(13) Supplement to Rate Schedule No. 102—Standstill Agreement with Middleborough Gas and Electric Department

Comment date: January 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Northern States Power Company (Minnesota Company) and Northern States Power Company (Wisconsin Company)

[Docket No. ER98–807–000]

Take notice that on November 26, 1997, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP), tendered for filing an Electric Service Agreement between NSP and National Gas & Electric (Customer). This Electric Service Agreement is an enabling agreement under which NSP may provide to Customer the electric services identified in NSP Operating Companies Electric Services Tariff Original Volume No. 4. NSP requests that this Electric Service Agreement be made effective on November 7, 1997.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Central Vermont Public Service Corporation

[Docket No. ER98–812–000]

Take notice that on November 26, 1997, Central Vermont Public Service Corporation (CVPS) tendered for filing the Forecast 1998, Cost Report in accordance with Article IV, Section A (2) of the North Hartland Transmission Service Contract (Contract) between Central Vermont Public Service Corporation (CVPS or Company) and the Vermont Electric Generation and Transmission Cooperative, Incorporated, (VG&T) under which CVPS transmits the output of the VG&T's 4.0 Mw hydroelectric generating facility located on North Hartland, Vermont via a 12.5 kV circuit owned and maintained by CVPS to CVPS's substation in Quechee, Vermont. The North Hartland Transmission Service Contract was filed with the Commission on September 6, 1984 in Docket No. ER–674–000 and was designated as Rate Schedule FERC No. 121.

Article IV, Section A(2) of the Contract requires CVPS to submit the forecast cost report applicable to a service year by December 1, of the preceding year.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Central Vermont Public Service Corporation

[Docket No. ER98–818–000]

Take notice that on November 26, 1997, Central Vermont Public Service Corporation (CVPS), tendered for filing the Forecast 1998, Cost Report required under paragraph Q–2 on Original Sheet No. 19 of the Rate Schedule FERC No. 135 (RS–2 Rate Schedule) under which CVPS sells electric power to Connecticut Valley Electric Company Incorporated, (Customer). CVPS states that the Cost Report reflects changes to the RS–2 rate schedule which were approved by the Commission's June 6, 1989, order in Docket No. ER88–456–000.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Virginia Electric and Power Company

[Docket No. ER98–823–000]

Take notice that on November 26, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing Service Agreements between Virginia Electric and Power Company and DPL Energy Inc., Columbia Power Marketing Corporation, Energis Resources, Inc., and ProLiance Energy, LLC. under the FERC Electric Tariff (Original Volume No. 4), which was accepted by order of the Commission dated September 11, 1997 in Docket No. ER97–3561–000 (80 FERC ¶ 61, 275 (1997)). Under the tendered Service Agreements, Virginia Power will provide services to DPL Energy, Inc., Columbia Power Marketing Corporation, Energis Resources, Inc. and ProLiance Energy, LLC., under the rates, terms and conditions of the applicable Service Schedules included in the Tariff. Virginia Power requests effective dates of the Service Agreements to be October 28, 1997, for DPL Energy, Inc., November 1, 1997, for Columbia Power Marketing Corporation, and November 6, 1997, for both Energis Resources, Inc., and ProLiance Energy, LLC.

Copies of the filing were served upon DPL Energy, Inc., Columbia Power Marketing Corporation, Energis Resources, Inc., and ProLiance Energy, LLC., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Florida Power Corporation

[Docket No. ER98–824–000]

Take notice that on November 26, 1997, Florida Power Corporation (Florida Power) tendered for filing a service agreement providing for non-firm point-to-point transmission service to Carolina Power and Light Company (CP&L) pursuant to its open access transmission tariff. Florida Power requests that the Commission waive its notice of filing requirements and allow the agreement to become effective on December 1, 1997.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Northeast Utilities Service Company

[Docket No. ER98–825–000]

Take notice that Northeast Utilities Service Company (NUSCO), on November 26, 1997, tendered for filing a Service Agreement with Braintree Electric Light Department (BELD) under the NU System Companies' System Power Sales/Exchange Tariff No. 6, and a Letter Agreement for specific service under the Tariff.

NUSCO states that a copy of this filing has been mailed to BELD.

NUSCO requests that the Service Agreement and the Letter Agreement become effective November 1, 1997.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Electric and Gas Company

[Docket No. ER98–826–000]

Take notice that Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey on November 26, 1997, tendered for filing an agreement for the sale of capacity and energy to ConAgra Energy Services, Inc. (ConAgra), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of October 27, 1997.

Copies of the filing have been served upon ConAgra and the New Jersey Board of Public Utilities.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Southern Company Services, Inc.

[Docket No. ER98–859–000]

Take notice that on November 26, 1997, Southern Company Services, Inc., acting on behalf of Gulf Power Company, filed an amended Service Agreement by and among itself, as agent for Gulf Power Company, Gulf Power Company and the City of Blountstown, Florida (City of Blountstown), pursuant to which Gulf Power Company will make wholesale power sales to the City of Blountstown for a term in excess of one (1) year.

Comment date: December 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Cinergy Services, Inc.

[Docket No. ER98–1040–000]

Take notice that on December 11, 1997, on behalf of its operating companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc., Cinergy Services, Inc. (Cinergy), tendered for filing a Service Agreement between Cinergy and the Nordic Electric (Customer).

Cinergy and Customer have requested an effective date of November 17, 1997.

Copies of the filing were served upon Nordic Electric and Michigan Public Service Commission.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. IES Utilities Inc.

[Docket No. ER98–2774–000]

Take notice that on December 8, 1997, IES Utilities Inc. (IES) tendered for filing a letter withdrawing Appendix 13 to the Operating and Transmission agreement

between IES and Central Iowa Power Cooperative.

Comment date: December 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Western Resources, Inc.

[Docket No. ER98–677–000]

Take notice that on December 12, 1997, Western Resources Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. New York State Electric & Gas Corporation

[Docket No. ER98–796–000]

Take notice that on November 26, 1997, New York State Electric & Gas Corporation (NYSEG), tendered for filing copies of Service Agreements between NYSEG and the List of Customers.

These Service Agreements were entered into under the NYSEG open access transmission tariff filed and effective on June 11, 1997, in the *New York State Electric & Gas Corporation*, Docket No. OA97–571–000 (Tariff). Under the Service Agreements, NYSEG agrees to furnish and the Customers agree to take pay for Short-Term Firm Point-to-Point Transmission Service, in accordance with the terms set forth in the Tariff, using NYSEG transmission facilities. The monthly charges for these services are set forth in the Tariff.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Southern California Edison Company

[Docket No. ER98–798–000]

Take notice that on November 26, 1997, Southern California Edison Company (Edison), tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 246.46, FERC Rate Schedule No. 246.47, and all supplements thereto.

Edison requests that this cancellation become effective September 30, 1997.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Desert Generation & Transmission Co-operative

[Docket No. ER98–801–000]

Take notice that on November 25, 1997 Transmission Co-operative, tendered for filing an executed umbrella non-firm point-to-point service agreement with Public Service Company of Colorado under its open access transmission tariff. Deseret requests an effective date of September 1, 1997. Deseret's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000. Public Service company of Colorado has been provided a copy of this filing.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Deseret Generation of Transmission Co-operative

[Docket No. ER98–802–000]

Take notice that on November 25, 1997, Deseret Generation & Transmission Co-operative, tendered for filing an executed umbrella non-firm point-to-point service agreement with PacifiCorp under its open access transmission tariff. Deseret requests an effective date of June 17, 1997. Dereret's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000. PacifiCorp has been provided a copy of this filing.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Southern California Edison Company

[Docket No. ER98–803–000]

Take notice that on November 26, 1997, Southern California Edison Company (Edison), tendered for filing a Notice of Cancellation of Rate Schedule No. 246.35, FERC Rate Schedule No. 246.36, and all supplements thereto.

Edison requests that this cancellation become effective October 31, 1997.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Southern California Edison Company

[Docket No. ER98–804–000]

Take notice that on November 26, 1997, Southern California Edison Company (Edison), tendered for filing a Notice of Cancellation of Rate Schedule No. 246.42, FERC Rate Schedule No. 246.43, FERC Rate Schedule No. 351, and all supplements thereto.

Edison requests that this cancellation become effective October 31, 1997.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Cinergy Services, Inc.

[Docket No. ER98–805–000]

Take notice that on November 26, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and CNG Power Services Corporation (CNG).

Cinergy and CNG are requesting an effective date of November 15, 1997.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Cinergy Services, Inc.

[Docket No. ER98–806–000]

Take notice that on November 26, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Tenaska Power Services Co. (Tenaska).

Cinergy and Tenaska are requesting an effective date of November 15, 1997.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Central Vermont Public Service Corporation

[Docket No. ER98–816–000]

Take notice that on November 26, 1997, Central Vermont Public Service Corporation (CVPS) tendered for filing the Forecast 1998 Cost Report required under Article 2.3 on Second Revised Sheet No. 18 of FERC Electric Tariff, Original Volume No. 3, of CVPS under which CVPS provides transmission and distribution service to the following Customers:

Vermont Electric Cooperative, Incorporated.
Lyndonville Electric Department.
Village of Ludlow Electric Light Department.
Village of Johnson Water and Light Department.
Village of Hyde Park Water and Light Department.
Rochester Electric Light and Power Company.
Woodsville Fire District Water and Light Department.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Washington Water Power

[Docket No. ER98–821–000]

Take notice that on November 26, 1997, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, executed a Service Agreement and Certificate of Concurrence under WWP's FERC Electric Tariff First Revised Volume No. 9, with Power Fuels, Inc. WWP requests waiver of the prior notice requirement and requests an effective date of November 1, 1997.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Public Service Electric and Gas Company

[Docket No. ER98–827–000]

Take notice that on November 26, 1997, Public Service Electric Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to New Energy Ventures, L.L.C. (New Energy), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of October 27, 1997.

Copies of the filing have been served upon New Energy and the New Jersey Board of Public Utilities.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Public Service Electric and Gas Company

[Docket No. ER98–828–000]

Take notice that on November 26, 1997, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to the Borough of Park Ridge, New Jersey (Park Ridge) pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of October 27, 1997.

Copies of the filing have been served upon Park Ridge and the New Jersey Board of Public Utilities.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. Public Service Electric and Gas Company

[Docket No. ER98–829–000]

Take notice that on November 26, 1997, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to the Monongahela Power Company, the Potomac Edison Company, West Penn Power Company (AP) pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of October 27, 1997.

Copies of the filing have been served upon AP the New Jersey Board of Public Utilities.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. Central Vermont Public Service Corporation

[Docket No. ER98–886–000]

Take notice that on November 26, 1997, Central Vermont Public Service Corporation (CVPS) tendered for filing a letter stating that CVPS does not plan to file a Forecast 1998 Cost Report for FERC Electric Tariff, Original Volume No. 4, since there are no customers expected to take such service.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33832 Filed 12–29–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5942–3]

Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collections as described below:

DATES: Comments must be submitted on or before March 2, 1998.

ADDRESSES: U.S. Environmental Protection Agency, Office of Mobile Sources, Office of Air and Radiation, 401 M Street, S.W., Washington, D.C. 20460. Interested persons can obtain copies of the ICR at no charge by accessing ''What's New'' on the OMS Website, ''http://www.epa.gov/omswww''.

FOR FURTHER INFORMATION CONTACT: Susan Bullard, Telephone No. (202) 260–2614; Facsimile No. (202) 260–6011; or e-mail at ''bullard.susan@epamail.epa.gov''.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those who have an interest in the reduction of air emissions from mobile sources.

Title: ''ICR for gathering information about: the public's understanding of air quality, the impact of mobile sources, and actions individuals can take to improve air quality; and programs to increase the public's awareness.''

Abstract: EPA's Office of Mobile Sources (OMS) is charged with reducing air pollution from mobile sources. Although there's been significant and measurable progress in reducing air pollution in the past 20 years, it is clearly not enough to solve the problem. Ultimate solutions will require action by individuals as well as industry.

OMS and its partners in state, local and regional air and transportation agencies, other federal/state/local agencies, public health and other organizations are working to increase public awareness of air quality, the impact of mobile sources and choices individuals can make to help solve the problem of air pollution. To accomplish this mission in the public interest, air and transportation managers must better understand the public's knowledge of the problem as well as possible solutions. In order for individual consumers and drivers to make responsible choices, it is incumbent upon EPA and other air and transportation organizations to provide education and information as to choices available and impacts of those choices on the environment and quality of life.

Before we expend limited federal resources, we must conduct research to answer a number of questions vital to the mission. For example—how much does the public understand about air pollution, the impact of mobile sources,

and the benefits of informed choices? How much do they care? Who are credible sources of information for the air quality and public health message? How far is the public willing to go in commitment of time and money to ensure air quality? What are possible incentives to encourage people to make environmentally responsible choices? Have we been successful in our efforts to encourage informed choices?

Prior to materials production, we will conduct focus groups to test draft public education concepts and materials with proposed audiences to ensure appropriateness and effectiveness. Our goal will be to ensure that products produced will meet the needs of the public for which they're intended.

Finally, we intend to gather information about existing mobile source-related public education efforts from state and local air and transportation management agencies, industry, public health and other partners in order to maximize public benefit and minimize possibilities for duplication of effort. This will allow us to utilize limited federal resources responsibly.

Information will be gathered through telephone and in-person surveys, focus groups, questionnaires and evaluation forms and targeted meetings. Information will be gathered on both the state and local levels to support community-based projects and the national level to support long-term national outreach efforts. Participation in information-gathering is strictly voluntary.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) 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;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility and clarity of the information to be collected;

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: Respondents/Affected Entities: Those who have an interest in the reduction of air emissions from mobile sources

Estimated number of Respondents: 1700 per year.

Frequency of Response: One per year per respondent.

Estimated Total Annual Hour Burden: 2310 hours.

Estimated Burden per Respondent: 1 hour 20 minutes.

Estimated Total Annualized Cost Burden: none to respondents; no additional cost to agency staff.

This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: December 17, 1997.

Robert Brenner,

Program Official.

[FR Doc. 97–33957 Filed 12–29–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5940–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that EPA is planning to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB) to allow the Agency to continue collecting data for the Natural Gas STAR Program. Information is required from participants (''Partners'') in the Natural Gas STAR Program. Partners develop a Memorandum of Understanding, develop an implementation plan, and report to EPA annually on progress towards meeting the goals identified in the implementation plan. This ICR is a reinstatement of a previously approved information collection. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection described below.

DATES: Comments must be submitted on or before March 2, 1998.

ADDRESSES: Comments may be mailed to the Docket Clerk (Docket No. 97–62), located in the USEPA, Office of Air & Radiation. One original and two copies of each comment should be submitted. Hand delivery of comments should be made to: Air Docket, USEPA, MC 6102, 401 M Street, SW., room M 1500, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Rhone Resch, U.S. Environmental Protection Agency, Atmospheric Pollution Prevention Division (6202J), 401 M Street, SW, Washington, D.C. 20460, or call (202) 564–9793.

SUPPLEMENTARY INFORMATION:

I. Information Collection Requests

EPA is seeking comment on the ICR for the Natural Gas STAR Program (EPA ICR 1736.02). This ICR requests approval for renewal of an existing collection.

Affected Entities: Entities affected by this action are natural gas production, storage, transmission, and distribution facilities.

Abstract: The Natural Gas STAR Program is an EPA-sponsored, voluntary program that encourages cost effective methods for reducing methane emissions from natural gas production, storage, transmission, and distribution facilities. Partners determine and implement appropriate Best Management Practices (BMPs) that reduce methane emissions, are cost effective for the industry, and can increase competitiveness and maintain or enhance natural gas delivery service. Participants develop a Memorandum of Understanding, develop an implementation plan, and report to EPA annually on progress towards meeting the goals identified in the implementation plan.

Burden Statement: The estimated average public burden per respondent for new Partners is 45 hours per response, including time for reviewing instructions, searching existing data sources, gathering the data needed, and completing the collection of information.

Respondents: Natural gas production, storage, transmission, and distribution companies.

Estimated Number of Respondents: 140—67 new Partners and 74 existing Partners.

Estimated Total Annual Burden on Respondents: 6,300 hours.

Frequency of Collection: As needed.

II. Requests for Comments

The Agency will begin an effort to examine the information requested and consider options for reducing their burden and increasing the usefulness of the information collected by these forms. The Agency would appreciate any information on the users of this information, how they use this information, how the information could be improved, and how the burden for these forms can be reduced. In addition, the Agency is also soliciting comments that:

(i) 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;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

III. Public Docket

A record has been established for this action under docket number 97–62. A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from USEPA's Office of Air & Radiation. The public record is located at the Air Docket, USEPA, MC 6102, 401 M Street., SW., room M 1500, Washington, DC 20460.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to: Rhone Resch, U.S. Environmental Protection Agency, Atmospheric Pollution Prevention Division (6202J), 401 M Street, SW, Washington, D.C. 20460, or call (202) 564–9793.

Dated: December 18, 1997.

Paul Stolpman,

Director, Office of Air and Radiation.

[FR Doc. 97–33961 Filed 12–29–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5940–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that EPA is planning to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB) to allow the Agency to continue collecting data for the AgSTAR Program. Information is required from participants (''Partners'' and ''Allies'') in the AgSTAR Program. Partners, primarily livestock producers, complete a Memorandum of Understanding, develop an implementation plan, and report to EPA annually on progress towards meeting the goals identified in the implementation plan. Allies, primarily utilities and marketers of methane recovery technologies or related associations, complete a Memorandum of Understanding and obtain EPA approval to use EPA-developed materials or reproduction of materials bearing the AgSTAR logo. This ICR is a reinstatement of a previously approved information collection. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection described below.

DATES: Comments must be submitted on or before March 2, 1998.

ADDRESSES: Comments may be mailed to the Docket Clerk (Docket No. 97–61), located in the USEPA. Office of Air & Radiation. One original and two copies of each comment should be submitted. Hand delivery of comments should be made to: Air Docket, USEPA, MC 6102, 401 M Street., SW., room M 1500, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kurt Roos, U.S. Environmental Protection Agency, Atmospheric Pollution Prevention Division (6202J), 401 M Street, SW, Washington, D.C. 20460, or call (202) 564–9041.

SUPPLEMENTARY INFORMATION:

I. Information Collection Requests

EPA is seeking comment on the ICR for the AgSTAR Program (EPA ICR 1735.02). This ICR requests approval for renewal of an existing collection.

Affected Entities: Entities affected by this action are livestock producers, utilities, vendors and universities.

Abstract: AgSTAR is an EPA-sponsored, voluntary program that encourages livestock producers to implement methane recovery technologies to increase livestock production profit margins and reduce emissions from manure methane, a greenhouse gas. AgSTAR further encourages utilities, regulatory agencies and universities to support and promote the use of methane recovery technologies. The AgSTAR program consists of two types of participants: ''Partners'' and ''Allies.'' Partners, who are primarily livestock producers, complete a Memorandum of Understanding, develop an implementation plan, and report to EPA annually on progress towards meeting the goals identified in the implementation plan. Allies, primarily utilities and marketers of methane recovery technologies or related associations, complete a Memorandum of Understanding and obtain EPA approval to use EPA-developed materials or reproduction of materials bearing the AgSTAR logo.

Burden Statement: The estimated average public burden per respondent for new Partners and Allies is five hours per Partner response and nine hours per Ally, including time for reviewing instructions, searching existing data sources, gathering the data needed, and completing the collection of information.

Respondents: Livestock producers, utilities, vendors and universities.

Estimated Number of Respondents: 625.

Estimated Total Annual Burden on Respondents: 3,500 hours.

Frequency of Collection: As needed.

II. Requests for Comments

The Agency will begin an effort to examine the information requested and consider options for reducing their burden and increasing the usefulness of the information collected by these forms. The Agency would appreciate any information on the users of this information, how they use this information, how the information could be improved, and how the burden for these forms can be reduced. In addition, the Agency is also soliciting comments that:

(i) 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;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

III. Public Docket

A record has been established for this action under docket number 97–61. A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from USEPA, Office of Air & Radiation. The public record is located at the Air Docket, USEPA, MC 6102, 401 M Street., SW., room M 1500, Washington, DC 20460.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to: Kurt Roos, U.S. Environmental Protection Agency, Atmospheric Pollution Prevention Division (6202J), 401 M Street, SW, Washington, D.C. 20460, or call (202) 564–9041.

Dated: December 18, 1997.

Paul Stolpman,

Director, Office of Air and Radiation.

[FR Doc. 97–33962 Filed 12–29–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5941–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; Compliance Information Project, EPA ICR No. 1802.01

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Compliance Information Project (CIP), EPA ICR 1802.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 28, 1998.

ADDRESSES: Office of Enforcement and Compliance Assurance, Office of Planning and Policy Analyses; U.S. EPA; 401 M Street, SW (2201A); Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: John Stoody, (202) 564–5118 / (202) 501–0701 (fax), Office of Planning and Policy Analysis, Office of Enforcement and Compliance Assurance.

SUPPLEMENTARY INFORMATION:

Affected Entities: State compliance and enforcement personnel, especially field inspectors.

Title: Compliance Information Project (CIP)(EPA ICR No. 1802.01).

Abstract: The Compliance Information Project (CIP) is a new approach under development by the Office of Enforcement and Compliance Assurance (OECA) to gather and analyze compliance information that is not already routinely collected by EPA and State environmental personnel in evaluating compliance for planning and targeting purposes. The Agency is conducting the CIP to address concerns that our present methods and processes for identifying and using compliance information do not capture, internalize or use all of the compliance information potentially available to the Agency or the States.

The purpose of the CIP is to identify external compliance information which is readily available to the Agency or the States, but uncaptured or unutilized by current systems or methods. Uncaptured and unutilized compliance information is outside, or external to, the present knowledge base. For the purposes of this Project, such unaccounted for compliance information may be referred to as an ''information externality.'' An information externality becomes internalized when EPA or the States collect and use it. Two examples are unutilized studies, reports, or audits produced by States, private parties, or other government agencies, and observations by field personnel which, for one reason or another, escape our traditional methods for collecting and documenting information.

The CIP is designed to channel unidentified or unutilized compliance information to the personnel who design and implement our information, targeting, and planning systems. The Agency will use the CIP to internalize compliance information externalities by collecting and cataloging this information, identifying issues or possible conclusions, and passing the information on to the appropriate government personnel for further analysis and use. Such compliance information may fill gaps in the Agency's or the States' databases, guide us to previously unidentified compliance problems, enhance our ability to describe our successes, or help us in other ways.

Through the CIP, EPA will collect information in the form of compliance reports, studies and published articles on compliance with Federal environmental statutes. The Agency will also conduct field personnel roundtable interviews in each of the ten EPA Regions, and invite a representative from each State to participate along with Regional personnel. The Agency will provide interview guides to each of the participants in advance of the roundtable. Participants unable to attend the roundtable may respond in writing. Participants attending the roundtable may prepare advance comments and forward them to the CIP staff. Non-Federal respondents may include State compliance and enforcement personnel, especially field inspectors. Responses to the information collection request are voluntary and not required to obtain or retain any benefit. The Agency will not ask for nor collect, as part of this project, references to specific persons, facilities, or cases. The Agency will use information received to make observations and draw inferences where appropriate. The Agency will not, however, conduct a statistical analysis of the results.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. In any event, EPA is seeking the voluntary participation of State environmental enforcement personnel and has no intention of requiring a State response. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

EPA is soliciting comments to:

(i) 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;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond.

Burden Statement

EPA plans to conduct ten sets of interviews involving non-Federal respondents in the form of roundtables. EPA will contact 50 non-Federal respondents. The interview will place a burden of 16 hours on each respondent and cost in time of $43 per respondent per hour. Thus, the total expected respondent burden is estimated at 800 hours and $34,400.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and′ review the collection of information; and transmit or otherwise disclose the information.

Dated: December 19, 1997.

Susan O'Keefe,

Deputy Director, Office of Planning and Policy Analysis, Office of Enforcement and Compliance Assurance.

[FR Doc. 97–33966 Filed 12–29–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5941–9]

Proposed Settlement Agreement, Clean Air Act Petition for Review

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement, which was filed with the United States Court of Appeals for the District of Columbia Circuit by the United States Environmental Protection Agency (''EPA'') on October 16, 1997, to address a lawsuit filed by the Appalachian Power Company and other electric utilities. *Appalachian Power Company, et al.*, v. *United States Environmental Protection Agency*, No 93–1631. This lawsuit, which was filed pursuant to section 307(b) of the Act, 42 U.S.C. 7607(b), is a petition for review of the modeling assumptions required for existing point source and new or modified point source compliance demonstrations as set forth in Tables 9–1 and 9–2 of the ''Guideline on Air Quality Models'' (the ''Modeling Guidelines'') regulations published at 58 FR 38816 (July 20, 1993) and codified in Appendix W of 40 CFR Part 51. The proposed settlement agreement provides that EPA will issue specified guidance on interpretation of parts of the Tables in question and will propose to incorporate that guidance into the Modeling Guideline.

For a period of thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement agreement from persons who were not named as parties to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement agreement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

A copy of the proposed settlement agreement was filed with the Clerk of the United States Court of Appeals for the District of Columbia Circuit on October 16, 1997. Copies are also available from Phyllis Cochran, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–7606. Written comments should be sent to Alexander Schmandt at the address above and must be submitted on or before January 29, 1998.

Dated: December 18, 1997.

Scott C. Fulton,

Acting General Counsel.

[FR Doc. 97–33964 Filed 12–29–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5941–7]

Proposed Administrative Agreement for Recovery of Past Response Costs Under Section 122(h) of CERCLA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed settlement.

SUMMARY: Pursuant to section 122(h) of CERCLA, EPA is proposing to settle a claim under Section 107 of CERCLA for response costs incurred by EPA in conducting a removal action to address hazardous substances at the Pruitt & Grace Site in Lorain, OH. Mr. Michael Pruitt, the Settling Party, has agreed to reimburse EPA in the amount of $20,000. EPA today is proposing to approve this settlement offer because it reimburses EPA for costs incurred during the removal action.

DATES: Comments on this proposed settlement must be received on or before January 29, 1998.

ADDRESSES: Copies of the proposed settlement are available at the following address for review: (It is recommended that you telephone Mr. Kevin Chow at (312) 353–6181 before visiting the Region 5 Office).

Mr. Kevin Chow (C–14J), Office of Regional Counsel, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, IL 60604.

Comments on this proposed settlement should be addressed to: (Please submit an original and three copies, if possible) Mr. Kevin Chow (C–14J), Office of Regional Counsel, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Chow, Office of Regional Counsel, at (312) 353–6181.

SUPPLEMENTARY INFORMATION: In response to several hundred deteriorated drums at the Pruitt & Grace Site containing leaking hazardous or ignitable waste and posing a risk of fire or explosion, U.S. EPA undertook actions to minimize the immediate threat, test the materials involved, and properly dispose of the hazardous waste. The Settling Party was an owner and officer of a highway line painting company that operated at the site, and, after ceasing operations, left behind drums of hazardous and flammable waste, primarily paint and solvent waste. The Pruitt & Grace Site is not on the National Priorities List. A 30-day period, beginning on the date of publication, is open pursuant to section 122(i) of CERCLA for comments on this proposed settlement.

Comments should be addressed to Mr. Kevin Chow, Office of Regional Counsel (C–14J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, IL 60604.

Kevin C. Chow,

Assistant Regional Counsel.

[FR Doc. 97–33965 Filed 12–29–97; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 97–2676]

Telecommunications Relay Services; FCC Form 431

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that in an Order on Telecommunications Relay Services and the Americans with Disabilities Act of 1990 (Order), adopted December 22, 1997, and released December 22, 1997, the Commission calculated the contribution factor for the period April 26, 1998 through March 26, 1999 for the Telecommunications Relay Services (TRS) Fund. The contribution factor should ensure adequate funding of TRS. The Commission also approved the TRS payment formula for the 1998 calendar year. The payment rate will compensate TRS providers for the reasonable costs of providing interstate TRS. In addition, the Commission adopted the 1998 TRS Fund Worksheet, FCC Form 431, subject to approval by the Office of Management and Budget (OMB), which incorporates the new contribution factor and will be used by carriers in filing their TRS Fund contributions.

FOR FURTHER INFORMATION CONTACT: Andy Firth, Network Services Division, Common Carrier Bureau, (202) 418–1898 voice, (202) 418–2224 TTY, or James Lande, Industry Analysis Division, Common Carrier Bureau, (202) 418–0948.

SUPPLEMENTARY INFORMATION: 1. The Order on Telecommunications Relay Services and the Americans with Disabilities Act of 1990 was adopted pursuant to section 64.604(c)(4)(iii) of the Commission's Rules, 47 CFR 64.604(c)(4)(iii). Pursuant to the Order, and subject to approval by OMB, the 1998 TRS Fund Worksheet, FCC Form 431, shall be effective for the period April 26, 1998 through March 26, 1999. All subject carriers are required to file the form annually and contribute to the TRS Fund. The TRS Fund reimburses TRS providers for the costs of providing interstate TRS. The Commission's rules provide that the TRS Fund Worksheet shall be published in the **Federal Register**. See 47 CFR 64.604(c)(4)(iii)(B).

2. Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Federal Communications Commission, Records Management Branch, Room 234, Paperwork Reduction Project (3060–0536), Washington, D.C. 20554 and to the Office of Management and Budget, Paperwork Reduction Project (3060–0536), Washington, D.C. 20503.

Federal Communications Commission.

Geraldine Matise,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 97–33883 Filed 12–29–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 97–2681]

Meeting of The North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On December 22, 1997, the Commission released a public notice announcing the January 20, 1998, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its Agenda.

FOR FURTHER INFORMATION CONTACT: Jeannie Grimes, Paralegal Specialist, assisting the NANC at (202) 418–2313 or via the Internet at jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, DC 20054. The fax number is: (202) 418–7314. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: December 23, 1997. The next meeting of the North American Numbering Council (NANC) will be held on Tuesday, January 20, 1998, from 8:30 a.m. until 5:00 p.m., EST at the ANA Hotel, 2401 M Street, NW, Washington, DC.

This meeting will be open to members of the general public. The FCC will attempt to accommodate as many people as possible. Admittance, however will be limited to the seating available. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at either meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT,** stated above.

Proposed Agenda

The planned agenda for the January 20, 1998, meeting is as follows:

1. Number Pooling Management Group (NPMG) Report.
2. Industry Numbering Committee (INC) Report on Number Pooling.
3. Local Number Portability Administration (LNPA) Working Group Report: Follow-up activities for Second Report and Order, Local Number Portability, Docket 95–116. LNP Implementation and General Oversight Update.
4. Wireline/Wireless Integration Task Force (WWITF) Status Report. Discussion of whether the difference, within the context of service provider portability between porting a subscriber from wireline to wireless and porting a subscriber from wireless to wireline constitutes a lack of competitive parity.
5. Discussion of existing guidelines and practices for determining Area Code Relief.
6. North American Numbering Plan Administration (NANPA) Working Group Report. Status update on toll free database administrator entity recommendation and DSMI's neutrality issue. NANPA Transition Planning Task Force update. NANC review of draft Central Office (CO) Code Transition Plan. Discussion and closure on options for treatment of reserved ported numbers issue. Tutorial on toll free administration. Prioritization of toll free administration issues. Definition of reserved numbers.
7. Cost Recovery Working Group Report. Billing and Collection Agent (B&C Agent) update.
8. Steering Group Report. CICs Ad Hoc Group progress report on development of NANC's CICs recommendation to the FCC, under the Further Notice of Proposed Rulemaking and Order, In the Matter of Administration of the North American Numbering Plan Carrier Identification Codes (CICs), CC Docket 92–237, FCC 97–364.
9. Other Business.
10. Review of Decisions Reached and Action Items.

Federal Communications Commission.

Geraldine A. Matise,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 97–33882 Filed 12–29–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1191–DR]

Iowa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA–1191–DR), dated November 20, 1997, and related determinations.

EFFECTIVE DATE: November 20, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 20, 1997, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Iowa, resulting from a severe winter storm on October 26–28, 1997, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Iowa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Warren M. Pugh, Jr. of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Iowa to have been affected adversely by this declared major disaster:

The counties of Clarke, Iowa, Jasper, Madison, Mahaska, Marion, Mills, Polk, Pottawattamie, Union, and Warren for Public Assistance.

All counties within the State of Iowa are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 97–33929 Filed 12–29–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 203–011602.

Title: The Grand Alliance Agreement II.

Parties:

Hapag-Lloyd Container Linie GmbH
Nippon Yusen Kaisha
P&O Nedlloyd Limited
P&O Nedlloyd B.V.
Orient Overseas Container Line Inc.
Orient Overseas Container Line (UK) Limited.

Synopsis: The proposed Agreement would permit the parties to charter space among themselves and coordinate their vessel services. They may also: charter vessels among themselves or from third parties; agree to other, related cooperative arrangements; and, with voluntary adherence, agree upon rates, terms, and conditions of service in the trade between Untied States ports, and inland U.S. points via such ports, and ports and points in the Far East, the Indian Subcontinent, North Europe, the Mediterranean, the Middle East, Canada, Mexico, and Panama. The parties have requested a shortened review period.

Agreement No.: 201–200063–016.

Title: NYSA–ILA Assessment Agreement.

Parties:

New York Shipping Association
International Longshoremen Association.

Synopsis: The proposed Agreement reduces certain assessment rates applicable in the Port of New York and New Jersey.

Agreement No.: 224–000086–010.

Title: NYSA–ILA Collective Bargaining (Memorandum of Settlement) Agreement.

Parties:

New York Shipping Association.
The International Longshoremen Association.

Synopsis: The proposed Agreement provides the settlement, as agreed, by the parties on terms of all local conditions under various NYSA–ILA collective bargaining agreements.

Agreement No.: 224–000083–009.

Title: NYSA–ILA Final Management Agreement.

Parties:

(''Management Associations'')
Carriers Container Council, Inc.
New York Shipping Association, Inc.
Boston Shipping Association, Inc.
Hampton Roads Shipping Association
New Orleans Steamship Association
Philadelphia Marine Trade Association
South Atlantic Employers Negotiating Committee
Southeast Florida Port Employers Association
Steamship Trade Association of Baltimore
West Gulf Maritime Association
(''Management Stevedores'')
Ceres Terminals
Cooper/T. Smith Stevedoring
Fairway Terminal Corp.
Maher Terminals
Stevedoring Services of America
Stevens Shipping & Terminal Company
Universal Maritime Service Corp.
The International Longshoremen Association, AFL–CIO, and Its Districts and Locals

Synopsis: The proposed Amendment is a complete and operative labor agreement between the parties on all issues relating to the employment of longshore employees on container and ro-ro vessels and terminals in all ports from Maine to Texas at which ships of the Carriers Container Council (CCC)

and subscribers may call as well as all others.

Agreement No.: 224–201043.

Title: Port of Oakland/Ocean Management, Inc. D/B/A FESCO, Agencies North America Line (''FESCO'').

Parties: Port of Oakland, Ocean Management, Inc. d/b/a/FESCO Agencies North America Line.

Synopsis: The proposed Agreement provides that FESCO will have nonexclusive right to certain assigned premises at the Port's Charles P. Howard Terminal, for berthing, loading and discharging of its vessels and related liner operations. The term of the Agreement is for five years.

Dated: December 23, 1997.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–33868 Filed 12–29–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, January 5, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: December 24, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–34069 Filed 12-24-97; 11:12 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 971–0026]

Shell Oil Company; Texaco Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 2, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: William Baer, Federal Trade Commission, 6th & Pennsylvania Ave., NW, H–374, Washington, DC 20580. (202) 326–2932. George Cary, Federal Trade Commission, 6th & Pennsylvania Ave., NW, H–374, Washington, DC 20580. (202) 326–3741.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for December 19, 1997), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, room H–130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

I. Introduction

The Federal Trade Commission (''Commission'') has accepted from Shell Oil Co. (''Shell'') and Texaco Inc. (''Texaco'') (collectively ''Proposed Respondents'') an Agreement Containing Consent Order (''Proposed Consent Order''). The Commission has also entered into a Hold Separate Agreement that requires Proposed Respondents to hold separate and maintain certain divested assets. The Proposed Consent Order remedies the likely anticompetitive effects, in seven geographic markets, arising from certain aspects of Proposed Respondents' joint venture.

II. Description of the Parties and the Transaction

Shell, which is headquartered in Houston, TX, is one of the world's largest integrated oil companies. Among its other businesses, Shell operates petroleum refineries that make various grades of gasoline, diesel fuel, and kerosene jet fuel, among other petroleum products, and Shell sells these products to intermediaries, retailers and consumers. It owns or leases approximately 3,400 gasoline stations nationally and sells gasoline to jobbers or gasoline dealers that operate another 5,000 retail outlets throughout the United States. During fiscal year 1996, Shell sold about $8.66 billion of gasoline nationally and had revenues from downstream operations (refining, transportation, and marketing of petroleum products) of approximately $22.7 billion.

Texaco, which is headquartered in White Plains, NY, is another of the world's largest integrated oil companies. Among its other businesses, Texaco operates petroleum refineries in the United States that make gasoline, diesel fuel, kerosene jet fuel, and other petroleum products, and sells those products throughout the midwestern and western United States. Texaco owns one-half of Star Enterprises, Inc., a joint venture between Texaco and Saudi Refining, Inc. Star also operates refineries and markets gasoline and other petroleum products, under the Texaco name, in the southeastern and eastern United States. About 14,000 retail outlets sell Texaco-branded

gasoline throughout the United States. In fiscal year 1996, Texaco and Star earned about $207 million in profits from their downstream operations; in 1996, Texaco had worldwide revenues of approximately $45.5 billion.

On or about March 18, 1997, Shell and Texaco entered into a memorandum of understanding to form a limited liability corporation (''LLC''), to be known as ''Westco,'' into which Shell and Texaco would transfer their refining and marketing businesses and assets in the midwestern and western United States, together with their pipeline and other transportation interests throughout the United States. On or about July 16, 1997, Shell, Texaco and Saudi Refining entered into a memorandum of understanding to form a second LLC, to be known as ''Eastco,'' into which Shell and Star would transfer their refining and marketing businesses and assets in the southeastern and eastern United States. (Eastco and Westco are referred to jointly or separately as ''Joint Venture.'')

III. The Proposed Complaint and Consent Order

The Commission has entered into an agreement containing a Proposed Consent Order with Shell and Texaco in settlement of a proposed complaint. The proposed complaint alleges that the proposed Joint Venture violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and that consummation of the Joint Venture would violate Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act. The proposed complaint alleges that the Joint Venture will lessen competition in each of the following markets: (1) Conventional gasoline and kerosene jet fuel in the Puget Sound area of Washington State (i.e., the cities of Seattle, Tacoma, Olympia, Bremerton and surrounding areas); (2) conventional gasoline and kerosene jet fuel in the Pacific Northwest (i.e., the States of Washington and Oregon west of the Cascade mountains); (3) CARB gasoline (specially formulated gasoline required in California) in the State of California; (4) asphalt in the northern portion of the State of California (approximately north of Fresno); (5) transportation of refined light petroleum products to the inland portions of the State of Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, and Tennessee (i.e., the portions more than 50 miles from ports such as Savannah, Charleston, Wilmington and Norfolk) (''inland Southeast''); (6) CARB gasoline in San Diego County, CA; and (7) conventional gasoline and diesel fuel on the island of Oahu, HI.

To remedy the alleged anticompetitive effects of the Joint Venture, the Proposed Consent Order requires Proposed Respondents: (1) To divest Shell's refinery located in Anacortes, WA (''Anacortes Refinery''), and to allow all of Shell's branded dealers and jobbers in Washington and Oregon to enter into supply contracts with the acquirer of that refinery, notwithstanding the existence of any long-term contracts or termination penalties; (2) to divest either Texaco's interest in the Colonial pipeline or Shell's interest in the Plantation pipeline; (3) to divest gasoline stations in San Diego County representing a sufficient volume to establish a viable wholesale competitor; and (4) to divest the terminal and retail operations of either Shell or Texaco on Oahu. Each divestiture must be made to an acquirer that receives the prior approval of the Commission and in a manner approved by the Commission, and must be completed within six months of the Commission's final issuance of the consent order. Proposed Respondents must also enter into and maintain a ten-year agreement to supply Huntway Refining Company with undiluted heavy crude oil. The Proposed Consent Order provides that no amendment to the Huntway supply agreement relating to price, volume or termination will be effective until approved by the Commission.

For ten (10) years after the consent order becomes final, the Proposed Respondents are prohibited from entering into a joint venture or other affiliation involving or acquiring petroleum refining or marketing assets in Alaska, California, Oregon and Washington valued at $100 million or more, without giving prior notice to the Commission, where such venture would not be subject to the reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a.

Proposed Respondents are required to provide the Commission with a report of compliance with the consent order within sixty (60) days following the date that the consent order becomes final, every sixty (60) days thereafter until the divestitures are completed, and annually for a period of ten (10) years.

Proposed Respondents also have entered into a Hold Separate Agreement. Under the terms of this Agreement, until the divestiture of the Shell Anacortes Refinery has been completed, Proposed Respondents must maintain the Shell Anacortes Refinery as a separate, competitively viable business, and not combine it with the operations of the Joint Venture. Under the terms of the Proposed Consent Order, Proposed Respondents must also maintain the other assets to be divested in a manner that will preserve their viability, competitiveness and marketability, must not cause their wasting or deterioration, and cannot sell, transfer, or otherwise impair the marketability or viability of the assets to be divested. The Proposed Consent Order and the Hold Separate Agreement specify these obligations in detail.

The FTC staff conducted the investigation leading to the Proposed Consent Order in collaboration with the Attorneys General of the States of California, Hawaii, Oregon and Washington. As part of this joint effort, Proposed Respondents have entered into agreements with these States settling charges that the Joint Venture would violate both state and federal antitrust laws. To avoid conflicts between the Proposed Consent Order and the State consent decrees, the Commission has agreed to extend the time for divesting particular assets if all of the following conditions are satisfied: (1) Proposed Respondents have fully complied with the Proposed Consent Order; (2) Proposed Respondents submit a complete application in support of the divestiture of the assets and businesses to be divested within four months after the Commission's final approval of the consent order (two months before the required divestitures must be completed); (3) the Commission has in fact approved a divestiture; but (4) Proposed Respondents have certified to the Commission within ten days after the Commission's approval of a divestiture that a State has not approved that divestiture. If these conditions are satisfied, the Commission will not appoint a trustee or seek civil penalties for an additional sixty days, in order to allow Proposed Respondents either to satisfy the State's concerns or to produce an acquirer acceptable to the Commission and the State. If the State remains unsatisfied at the end of that additional period, the Commission may appoint a trustee and seek penalties.

IV. Resolution of the Competitive Concerns

The Proposed Consent Order alleviates the alleged competitive concerns arising from the Joint Venture in seven geographic markets, which are discussed below.

A. Refining of Conventional Gasoline, Kerosene Jet Fuel, and CARB Gasoline

Four companies operate refineries in and around Seattle, WA, and one

company operates a small refinery in Tacoma, WA. Shell and Texaco operate refineries in Anacortes, WA, and produce conventional gasoline and kerosene jet fuel, among other products. Shell also produces CARB gasoline. Conventional gasoline and kerosene jet fuel are each product markets, because operators of gasoline-fueled automobiles and of jet aircraft are unlikely to switch to other fuels in response to a small but significant and nontransitory increase in the price of gasoline or kerosene jet fuel, respectively.

Puget Sound is a relevant antitrust geographic market for conventional gasoline because the refiners in this market can profitably raise prices by a small but significant and nontransitory amount without losing significant sales to other refiners. The five Seattle refineries supply virtually all of the conventional gasoline consumed in the Puget Sound market. The nearest refineries, located in California, Alaska, and Canada, are unlikely to divert gasoline from their current markets into Puget Sound in response to a small but significant and nontransitory increase in price because of transportation costs and limited access to a sufficient number of independent retail outlets. A Puget Sound price increase likely would not be defeated even if Puget Sound refiners were unable to raise price in Portland, OR, since Puget Sound refiners could price discriminate between Puget Sound and Portland.

The Joint Venture may also adversely affect competition in the broader geographic market of the Pacific Northwest. This market is supplied by the refiners in Washington, one refinery in San Francisco, and one refinery in Alaska. Other refiners are unlikely to enter this market. Customers in the Pacific Northwest will not practicably turn outside the market to obtain supplies for a small but significant and nontransitory increase in price. After the Joint Venture, the Puget Sound refiners could coordinate their prices. As measured by refinery capacity, the Joint Venture will increase the Herfindahl-Hirschman Index (''HHI'') for conventional gasoline in Puget Sound by 1318 points to 3812, and increase the HHI in the Pacific Northwest by 561 points to 2896.

The refiners in Puget Sound also supply all of the jet fuel used by airlines at the Seattle-Tacoma International Airport. Three refiners bid to supply the airlines flying into that airport, which receives all of its jet fuel supplies by the Olympic Pipeline. Only four refiners, including Shell and Texaco, practicably can send jet fuel through that pipeline. These refiners thus have a cost advantage over more distant refiners. The Joint Venture will eliminate one of these firms as an independent bidder, raising the likelihood that the incumbents could raise prices by a small but significant and nontransitory amount before alternative supplies flow into the market. The Joint Venture will raise the HHI in this market by 481 points to 5248.

Airlines in Portland can and do obtain fuel supplies from the refiners that use the Olympic Pipeline as well as from a refinery in the San Francisco area. The Joint Venture will eliminate one of these firms as an independent bidder, thus allowing the remaining bidders to raise prices above competitive levels. Accordingly, for airlines in Portland, the relevant geographic market is the Pacific Northwest. The Joint Venture will raise the HHI in this market by 258 points to 2503.

California requires a special formulation of gasoline, known as ''CARB gasoline,'' which is more expensive to produce than conventional gasoline. The product market in California is therefore CARB gasoline because, by law, consumers in that state have no alternative. Most refiners in California, as well as Shell's refinery at Anacortes, can make CARB gasoline. Shell and Texaco both market CARB gasoline in California. Prices would have to rise by more than a small but significant amount over current and projected levels to induce refiners outside the West Coast to make CARB gasoline and transport it to California by tanker. The market is moderately concentrated and will be moderately concentrated after the Joint Venture. The proposed transaction will raise the HHI by 154 points to 1635.

For all three fuels in all the geographic markets, the products are homogeneous, and wholesale prices are publicly available and widely reported to the industry. Refiners therefore readily can identify firms that deviate from a coordinated or collusive price. Existing exchange agreements likely will facilitate identifying and punishing those deviating from a coordinated or collusive price. Industry members have raised prices in the past by selling products outside the market, sometimes at a loss, in order to remove supplies that had been exerting downward pressure on prices. Entry by a refiner is unlikely to be timely, likely, and sufficient to defeat an anticompetitive price increase because of environmental constraints and because new refining capacity requires substantial sunk costs. The transaction could raise the costs of conventional and CARB gasoline and kerosene jet fuel in these markets by more than $150 million.

To remedy the harm, Section II of the Proposed Consent Order requires the Proposed Respondents to divest Shell's Anacortes refinery, which refines all of the products at issue (including CARB gasoline) and sells into all of the relevant markets (including California). This divestiture will eliminate the refining overlap in the Puget Sound and Pacific Northwest markets, and reduce the increase in concentration (HHI) in the California CARB gasoline market to less than 100 points. The Proposed Consent Order also requires Shell to allow its dealers and jobbers in Washington and Oregon the opportunity to become affiliated with the acquirer. This will increase the likelihood that a viable competitor has access to gasoline and retail outlets from which it can sell the gasoline.

B. Transportation of Undiluted Heavy Crude Oil to the San Francisco Bay Area

Texaco owns a heated pipeline (''THPL'') that carries undiluted heavy crude oil from the San Joaquin Valley of California to refineries in the San Francisco Bay area. THPL is the only source of undiluted heavy crude into that area. Huntway Refining Company is an asphalt refiner in the Bay area, and Shell is the only other refiner of asphalt in northern California. Shell and Huntway together make about 85 percent of the asphalt used in northern California. Both Shell and Huntway buy undiluted heavy crude from Texaco, transported by the THPL, and refine that oil into asphalt (among other products). Northern California (north of Fresno) is the relevant geographic market for asphalt because asphalt refineries outside the region are not competitive alternatives for most customers. The transaction would allow the Joint Venture to raise Huntway's costs by increasing prices of undiluted heavy crude to Huntway relative to the price charged to Shell. (Huntway's costs would increase if it were required to purchase more expensive lighter crudes or diluted heavy crudes). Shell could therefore raise prices of asphalt to consumers or prevent Huntway from cutting its price. Entry is unlikely to defeat this price increase. In the absence of the Proposed Consent Order, the Joint Venture could raise costs to asphalt buyers in northern California by more than three-quarters of a million dollars.

Section VII of the Proposed Consent Order eliminates this risk by requiring the Proposed Respondents to enter into a 10-year supply agreement with Huntway, the terms of which must be approved by the Commission. The

parties have in fact entered into such an agreement, which constitutes a confidential exhibit to the Proposed Consent Order. The Proposed Consent Order prohibits the Joint Venture from increasing the price or reducing the volume of crude oil supplied to Huntway, and also prohibits Proposed Respondents from terminating the supply agreement (except on terms identified in that agreement). The Proposed Consent Order also provides that any amendment relating to an increase in price, a decrease in volume, or termination is ineffective until approved by the Commission.

C. Transportation of Refined Light Petroleum Products to the Inland Southeast

The inland Southeast receives essentially all of its refined light petroleum products (including gasoline, diesel fuel and jet fuel) from either the Colonial pipeline or the Plantation pipeline. These two pipelines basically run parallel to each other from Louisiana to Washington, DC, and directly compete to provide petroleum product transportation services in the inland Southeast. Texaco owns approximately 14 percent of Colonial and has representation on the Colonial board of directors. Shell owns approximately 24 percent of Plantation and has representation on Plantation's board.

The proposed transaction would put the Joint Venture in a position to influence the decisions of both pipelines. The Proposed Respondents would also be privy to confidential competitive information of each pipeline. The effect of the Joint Venture might be substantially to lessen competition, including price and service competition, between the two pipelines. The Commission has previously recognized that control of overlapping interests in these two pipelines might substantially reduce competition in the market for transportation of light petroleum products to this section of the country. *Chevron Corp.*, 104 F.T.C. 597, 601, 603 (1984). To prevent the competitive harm from the Joint Venture, Section V of the Proposed Consent Order requires the Proposed Respondents to divest to one or more third parties either Texaco's interest in Colonial or Shell's interest in Plantation.

D. Local Gasoline Distribution in Oahu, HI

Gasoline and diesel fuel are supplied to Hawaii either by two refineries on Oahu (owned by Chevron and BHP) or by tanker. Most of the gasoline consumed on Oahu is produced in the two Oahu refineries. Shell, Texaco, Tosco, and the two refinery owners buy gasoline from the refineries and sell gasoline and diesel fuel at wholesale on Oahu. Terminal capacity on Oahu is essential to wholesale operations on that island; it is not economically feasible to sell directly from a refinery or a tanker or from a terminal on another island. Also, consumers of gasoline on Oahu have no alternative but to buy gasoline there. Accordingly, the relevant market in which to analyze the transaction is the wholesale sale (including terminal operations) and the retail sale of gasoline on Oahu. The markets are highly concentrated. As measured by gasoline sales from the terminal, the Joint Venture will raise the HHI by 267 points to 2160.

The market is susceptible to collusion or coordination. The Joint Venture will reduce the six competitors to five; the product at wholesale is homogeneous; and product exchanges enable the oil companies to share cost information and facilitate detection and punishment of any deviations from prices that might be coordinated. New entry is unlikely to defeat an anticompetitive price increase. An entrant would require sufficient terminal capacity and enough retail outlets to be able to buy gasoline at the tanker-load level, or 225,000 barrels (about 9.5 million gallons). Terminal capacity of this scale is unavailable in Oahu, and less than 2 percent of existing retail gasoline stations are available to affiliate with a new entrant at the wholesale level.

Section IV of the Proposed Consent Order restores competition by requiring Proposed Respondents to divest either Shell's or Texaco's terminal and retail assets on Oahu to a third party. In the absence of such relief, consumers in Hawaii are likely to pay over $2 million more for gasoline and diesel fuel.

E. Local Gasoline Distribution in San Diego County

Six vertically integrated oil companies control approximately 90 percent of the gasoline sold at both wholesale and retail in San Diego County. These oil companies require their branded retailers to buy gasoline at San Diego terminals, where these companies set the wholesale price. On average, San Diego wholesale prices exceed those in Los Angeles by more than the cost of pipeline transportation from Los Angeles to San Diego. There is no bottleneck at the pipeline preventing additional gasoline from flowing into the market to reduce the price difference between San Diego County and Los Angeles, suggesting that prices in San Diego can be and have been affected by the firms in that market. The wholesale and retail markets in San Diego County will be highly concentrated as a result of the Joint Venture, which will raise the HHI by 250 points to 1815.

There are barriers to entry at the retail level because of slow population growth, limited availability of adequate retail sites, permitting requirements, and the need to obtain a ''critical mass'' of stations to compete in the market. Furthermore, the extensive degree of vertical control, combined with barriers at the retail level, raises entry barriers at the wholesale level. The Joint Venture likely will enhance the prospects of collusion and tacit coordination, which could raise

Section III of the Proposed Consent Order restores competition by requiring the Proposed Respondents to divest to a single entity gasoline stations representing enough volume to create a viable competitor at the wholesale level and reduce concentration levels to within the thresholds of the *Merger Guidelines.*

V. Opportunity for Public Comment

The Proposed Consent Order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the Proposed Consent Order and the comments received and will decide whether it should withdraw from the Proposed Consent Order or make final the agreement's consent order.

The Commission anticipates that the Proposed Consent Order will cure the competitive problems alleged in the complaint. The purpose of this analysis is to invite public comment on the Proposed Consent Order, including the proposed divestitures, to aid the Commission in its determination of whether to make final the Proposed Consent Order. This analysis is not intended to constitute an official interpretation of the Proposed Consent Order, nor is it intended to modify the terms of the Proposed Consent Order in any way.

Donald S. Clark,

Secretary.

Separate Statement of Commissioner Mary L. Azcuenaga; Concurring in Part and Dissenting in Part; in Shell/Texaco/Star, File No. 9710026

Today, the Commission accepts for comment a consent order resolving allegations that the proposed joint venture of Shell Oil Company with Texaco Inc. and Star Enterprises would

violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. I find reason to believe that the joint venture, if consummated, would affect competition adversely in the refining of asphalt in Northern California and, therefore, support Paragraph VII of the order, which provides relief in that market. I do not find reason to believe the other violations of law alleged in the complaint and, therefore, dissent from Paragraphs II, III, IV and V of the order, which require divestitures in other markets. Although the allegation relating to refineries in the northwestern United States is arguably valid, on balance, I cannot support it and, therefore, cannot support Paragraph II of the order. The complaint allegations that support Paragraphs III, IV and V of the order seem to me far removed from our usual analysis under the merger guidelines.

I understand that the parties have negotiated identical relief with various state attorneys general and that the divestitures in the proposed Commission order will be required in any event. My obligation, however, is to apply federal law as I see it.

[FR Doc. 97–33872 Filed 12–29–97; 8:45 am]

BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of January meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that the Federal Accounting Standards Advisory Board will hold a two day meeting on Thursday and Friday, January 22 and 23, 1998, from 9:00 A.M. to 4:00 P.M. in Room 7C13 of the General Accounting Office building, 441 G St., N.W., Washington, D.C.

The purpose of the meeting is to discuss the following issues: (1) Accounting for Loans and Loan Guarantees; (2) Accounting for Property and Plant Equipment; (3) Accounting for Social Insurance; and (4) the addition of new projects for 1998.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., N.W., Room 3B18, Washington, D.C. 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: December 23, 1997.

Wendy M. Comes,

Executive Director.

[FR Doc. 97–33938 Filed 12–29–97; 8:45 am]

BILLING CODE 1610–01–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0040]

Proposed Collection; Comment Request Entitled Application for Shipping Instructions and Notice of Availability

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of request for public comments regarding reinstatement to a previously approved OMB clearance (3090–0040).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning Application for Shipping Instructions and Notice of Availability.

DATES: Comment Due Date: March 2, 1998.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Marcia Crockett, Acquisition Operations & Electronic Commerce Center, Supply Management Division, (703) 305–7551.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to reinstate information collection, 3090–0400, concerning Application for Shipping Instructions and Notice of Availability. This information collection supports and justifies the markup of the six percent surcharge for the GSA export reimbursable program. It also is used to evaluate and obtain the best cube utilization of shipping vans and containers for export direct delivery shipments. The form contains data necessary to prepare Transportation Control and Movement Documents (TCMD) which are required when material enters the Defense Transportation System.

B. Annual Reporting Burden

Respondents: 500; *annual responses*: 4,000; *average hours per response*: .20; *burden hours*: 1,333.

COPY OF PROPOSAL: A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: December 19, 1997.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 97–33905 Filed 12–29–97; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

Federal Supply Service; Broker and Direct Move Management Services Provider Participation in the General Services Administration's Centralized Household Goods Traffic Management Program (CHAMP)

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of proposed program changes for comment: Extension of comment period.

SUMMARY: This document extends the comment period of the document published at 62 FR 64225, December 4, 1997, to January 12, 1998. Earlier this year, GSA provided the household goods transportation industry an opportunity to comment on its draft 1997 Household Goods Tender of Service (HTOS). GSA has received and reviewed the industry's comments on the draft 1997 HTOS and is in the process of making appropriate revisions to the document before issuing it in final. The provisions contained in this notice apply to household goods transportation broker and direct move management services provider participants in CHAMP and were not included in the original draft HTOS. We are offering these provisions for industry review and comment at this time.

DATES: Please submit your comments by January 12, 1998.

ADDRESSES: Mail comments to the Travel and Transportation Management

Staff (FBX), General Services Administration, Washington, DC 20406. Attn: **Federal Register** Notice. GSA will consider your comments in developing the final move management services provisions. In the interim, rates filed in response to GSA's 1996 Request for Offers have been extended for 90 days from October 31, 1997 to January 29, 1998.

FOR FURTHER INFORMATION CONTACT: Larry Tucker, Senior Program Analyst, Travel and Transportation Management Staff, FSS/GSA, 703–305–7660.

SUPPLEMENTARY INFORMATION: The proposed changes appear at 62 FR 64225, December 4, 1997.

Dated: December 22, 1997.

Janice Sandwen,

Director, Travel and Transportation Management Staff.

[FR Doc. 97–33862 Filed 12–29–97; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Three Meetings of the National Bioethics Advisory Commission (NBAC) and its Subcommittees

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of three meetings of the National Bioethics Advisory Commission and its subcommittees. The Commission will continue addressing the protection of the rights and welfare of human subjects in research including decisionally impaired populations and the federal agency survey as well as issues in genetics including genetics information and tissue storage. The meetings are open to the public and opportunities for statements by the public will be provided.

Dates, Times, and Locations

Genetics Subcommittee: January 6, 1998, 1:30 pm–5:00 pm, Crystal Gateway Marriott Hotel, 1700 Jefferson Davis Highway, Arlington, Virginia

Full Commission: January 7, 1998, 8:00 am–5:00 pm, Crystal Gateway Marriott Hotel, 1700 Jefferson Davis Highway, Arlington, Virginia

Human Subjects Subcommittee: January 8, 1998, 8:00 am—12:30 pm, Crystal Gateway Marriott Hotel, 1700 Jefferson Davis Highway, Arlington, Virginia

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) by Executive Order 12975 on October 3, 1995. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council and other entities on bioethical issues arising from the research on human biology and behavior, and in the applications of that research including clinical applications.

Public Participation

The meetings are open to the public with attendance limited by the availability of space. Members of the public who wish to present oral statements should contact Ms. Patricia Norris by telephone, fax machine, or mail as shown below prior to the meeting as soon as possible. The Chairs of the full Commission and subcommittees will reserve time for presentations by persons requesting to speak. The order of speakers will be assigned on a first come, first serve basis. Individuals unable to make oral presentations are encouraged to mail or fax their comments to the NBAC staff office at least four business days prior to the meeting for distribution to the subcommittee members or Commission and inclusion in the public record. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Norris, National Bioethics Advisory Commission, MSC–7508, 6100 Executive Boulevard, Suite 5B01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Henrietta D. Hyatt-Knorr,

Deputy Executive Director, National Bioethics Advisory Commission.

[FR Doc. 97–33792 Filed 12–29–97; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Orphan Products Board; Notice of Public Meeting

AGENCY: Office of Public Health and Science.

ACTION: Notice of meeting.

SUMMARY: The Department of Health and Human Services and the Office of Public Health and Science (Office of the Assistant Secretary for Health) are announcing a public meeting of the Orphan Products Board. The purpose of this meeting is to facilitate the research, development, and approval of orphan products and to coordinate Government activities with the private sector to achieve these goals. In this meeting there will be an opportunity for interested persons to present information and views on the issue of orphan products development.

DATES: The public meeting be held on Thursday, February 12, 1998, from 2 p.m. to 5 p.m. Requests to attend or participate should be sent by February 4, 1998.

ADDRESSES: The public meeting will be held at the Hubert H. Humphrey Bldg., 200 Independence Ave. S.W., Washington, DC. Written requests to attend or participate should be sent to Robert F. Steeves, Orphan Products Board, Food and Drug Administration (HF–35), 5600 Fishers Lane, rm. 8–73, Rockville, MD 20857, FAX 301–443–4915. Requests from nongovernmental persons should include full name, address, affiliation, and social security number for use in obtaining security clearance for entry into the facility.

FOR FURTHER INFORMATION CONTACT: Robert F. Steeves, Orphan Products Board, Food and Drug Administration (HF–35), 5600 Fishers Lane, Rockville, MD 20857, 301–827–3666.

SUPPLEMENTARY INFORMATION: An orphan drug is a drug for the treatment of a rare disease or condition which either has: (1) A prevalence in the United States of under 200,000 persons; or (2) a higher prevalence and for which there is no reasonable expectation that the cost of developing and making available in the United States a drug for such disease or condition will be recovered from sales in the United States of such drug. The Orphan Drug Act (Pub. L. 97–414) enacted on January 4, 1983, as amended, established a number of incentives to encourage the development and marketing of orphan drugs.

The Orphan Drug Act also established an Orphan Products Board to promote the development of drugs and devices for rare diseases or conditions and to assure appropriate coordination among interested Federal agencies, manufacturers, and organizations representing patients with rare diseases.

The Orphan Products Board is chaired by the Assistant Secretary for Health. The Board is composed of representatives from the Department of Health and Human Services (DHHS), the Department of Veterans Affairs (DVA), The National Institute of Disability and Rehabilitation Research (NIDRR), the Social Security Administration (SSA), and the Department of Defense (DOD). Within DHHS, representatives from the

Agency for Health Care Policy and Research (AHCPR), the Centers for Disease Control (CDC), the Food and Drug Administration (FDA), the Health Care Financing Administration (HCFA), the National Institutes of Health (NIH), and the Office of Public Health and Science (OPHS), serve on the Board. This public meeting will have two purposes:

1. Members of the Orphan Products Board will discuss their agencies recent orphan product development activities.

2. In keeping with its mandate to foster actions within the Department of Health and Human Services to facilitate the research, development, and approval of orphan products and to coordinate Government activities with the private sector in order to achieve these goals, the board encourages presentations by members of the public on any issues involving the development and availability of orphan products. Those persons wishing to make a presentation at the meeting should submit a written request for a time slot to the Executive Director of the Orphan Products Board. The request for participation should be submitted before February 4, 1998, and should include: (a) Name, address, and telephone number of the person desiring to make a presentation; (b) affiliation, if any; (c) a summary of the presentation; and (d) the approximate amount of time required for the presentation (no more than 10 minutes, unless more time can be justified).

Individuals and organizations with common interests or proposals are urged to coordinate or consolidate their presentations. Joint presentations may be required of persons or organizations with a common interest. The time available will be allocated among the individuals who request an opportunity for a presentation. Formal written statements or extensions of remarks (five copies) should be presented to the Executive Director on the day of the meeting for inclusion in the record of the meeting. At the discretion of the Chairman, and as time permits, any person in attendance may be heard. This time will, most likely, be at the end of the scheduled session. For those unable to attend the meeting, comments may be sent to the listed contact person.

Dated: December 18, 1997.

John M. Eisenberg,

Acting Assistant Secretary for Health.

[FR Doc. 97–33869 Filed 12–29–97; 8:30 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency For Health Care Policy and Research

Notice of Health Care Policy and Research; Special Emphasis Panel Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following special emphasis panel scheduled to meet during the month of January 1998:

Name: Health Care Policy and Research Special Emphasis Panel.

Date and Time: January 6–7, 1998, 8:00 a.m.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville Room, Rockville, MD 20852. Open January 6, 8:00 a.m. to 8:30 a.m. Closed for remainder of meeting.

Purpose: This Panel is charged with conducting the initial review of grant applications proposing health services research training programs under the National Research Service Awards Program.

Agenda: The open session of the meeting on January 6, from 8:00 a.m. to 8:30 a.m., will be devoted to a business meeting covering administrative matters. During the closed session, the committee will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), the Administrator, Agency for Health Care Policy and Research, has made a formal determination that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact Sheila Simmons, Agency for Health Care Policy and Research, Suite 400, 2101 East Jefferson Street, Rockville, Maryland, 20852, Telephone (301) 594–1452 x 1627.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: December 22, 1997.

John Eisenberg,

Administrator.

[FR Doc. 97–33870 Filed 12–29–97; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N–0446]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on adverse drug experience reporting and recordkeeping requirements.

DATES: Submit written comments on the collection of information by March 2, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, before submitting the collection to OMB

for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Postmarketing Reporting of Adverse Drug Experiences—21 CFR 310.305 and 314.80—(OMB Control Number 0910–0230—Reinstatement)

Sections 201, 502, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321, 352, 355, and 371) require that marketed drugs be safe and effective. In order to know whether drugs that are not safe and effective are on the market, FDA must be promptly informed of adverse experiences occasioned by the use of marketed drugs. In order to help ensure this, FDA issued regulations in §§ 310.305 and 314.80 (21 CFR 310.305 and 314.80) to impose reporting and recordkeeping requirements on the drug industry that would enable FDA to take actions necessary for protection of the public health from adverse drug experiences.

All applicants who have received marketing approval of drug products are required to report to FDA serious, unexpected adverse drug experiences, as well as followup reports when needed (§ 314.80(c)(1)). This includes reports of all foreign or domestic adverse experiences as well as those obtained in scientific literature and from postmarketing epidemiological/surveillance studies. Under § 314.80(c)(2) applicants must provide periodic reports of adverse drug experiences. Under § 314.80(i) applicants must keep for 10 years records of all adverse drug experience reports known to the applicant.

For marketed prescription drug products without approved new drug applications or abbreviated new drug applications, manufacturers, packers, and distributors are required to report to FDA serious, unexpected adverse drug experiences as well as followup reports when needed (§ 310.305(c)(1) and (c)(3)). Under § 310.305(f) each manufacturer, packer, and distributor shall maintain for 10 years records of all adverse drug experiences required to be reported.

The primary purpose of FDA's adverse drug experience reporting system is to provide a signal for potentially serious safety problems with marketed drugs. Although premarket testing discloses a general safety profile of a new drug's comparatively common adverse effects, the larger and more diverse patient populations exposed to the marketed drug provides, for the first time, the opportunity to collect information on rare, latent, and long-term effects. Signals are obtained from a variety of sources, including reports from patients, treating physicians, foreign regulatory agencies, and clinical investigators. Information derived from the adverse drug experience reporting system contributes directly to increased public health protection because the information enables FDA to make important changes to the product's labeling (such as adding a new warning) and, when necessary, to initiate removal of a drug from the market.

Respondents to this collection of information are manufacturers, packers, distributors and applicants. FDA estimates the burden of this collection of information as follows:

TABLE 1.—Estimated Annual Reporting Burden[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
310.305(c)(5)	1	1	1	1	1
314.80(c)(1)(iii)	5	1	5	1	5
314.80(c)(2)	683	1.5	1,025	5	5,125
Total					5,131

[1] The reporting burden for §§ 310.305(c)(1)(i), 310.305(c)(3), and 314.80(c)(1)(i) was reported in 0910–0291. There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
310.305(f)	25	1	25	1	25
314.80(i)	683	1	683	1	683
Total					6,547

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on FDA's knowledge of adverse drug experience reporting, including knowledge about the time needed to prepare the reports and the number of reports submitted to the agency.

Dated: December 18, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–33797 Filed 12–29–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0529]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on a three-part telephone survey of tobacco retailers, to assess the effectiveness of an advertising campaign aimed at increasing retailers' awareness of, and motivating retailers to comply with, new regulations that prohibit retailers from selling cigarettes and smokeless tobacco to persons younger than 18 years of age, and require retailers to verify, by means of photographic identification containing the bearer's date of birth, the age of every purchaser who is younger than 27 years old.

DATES: Submit written comments on the collection of information by March 2, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Requests and two copies of any comment are to be submitted except that individuals may submit one copy comments should be identified with the docket number found in brackets in the heading of this document. Received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

National Tobacco Retailer Tracking Survey

On February 28, 1997, new Federal regulations in 21 CFR part 897 went into effect that prohibit retailers from selling cigarettes and smokeless tobacco to persons younger than 18 years of age, and require retailers to verify, by means of photographic identification, the age of purchaser younger than 27 years old. To enforce these requirements, FDA is commissioning State officials to conduct compliance checks during which an adolescent, accompanied by a commissioned official, will attempt to purchase cigarettes and smokeless tobacco at retail establishments.

FDA is planning to conduct a national advertising campaign aimed at raising retailers' awareness of the new regulations and motivating retailers to comply. The campaign will target persons who sell cigarettes or smokeless tobacco to consumers for their personal use, including clerks and cashiers in grocery and convenience stores, pharmacies and drug stores, gas stations, liquor stores, taverns and bars, and tobacco stores. As a part of the campaign, FDA is proposing to conduct a three-part telephone survey of tobacco retailers to measure their awareness of, and compliance with, the new regulations before and after exposure to the advertising campaign.

The initial overall media campaign would focus on the 10 States with which FDA has already contracted to conduct compliance checks, and would be expanded as additional States contract with FDA. The media campaign would be conducted over a 12-month period in each State that receives it. States that have contracted with FDA and are exposed to the media campaign (test States) will be compared with States that have not contracted with FDA (control States). Although some of the control States may contract with FDA during the course of the data collection, at the start of the data collection there would be 10 test States and 10 control States.

A total of 6,000 tobacco retailers would be randomly selected to participate in a telephone interview over three phases of data collection. Data would be collected in three phases over a 12-month period. The first phase would occur immediately before the 10 test States that have contracted with FDA are exposed to the media campaign. The second phase would occur approximately 6 months later and would allow for an assessment of retailer awareness of and compliance with the new regulations after recent exposure to the advertising campaign in the original 10 test States. A third phase of data collection would be conducted approximately 6 months after the second phase. This phase would address retailer awareness of and compliance with the new regulations after extended exposure to the media campaign in the original 10 test States, and would address retailer awareness of and compliance with the new regulations after recent exposure to the advertising campaign in those former control States that contracted with FDA after the first phase of data collection. All interviewing would be conducted by a single-market research firm that would

employ computer-aided telephone interviewing technology to expedite the fieldwork and improve accuracy. FDA plans to use the results of the survey to assess the effectiveness of the advertising campaign. Under 21 U.S.C. 393 (b)(2)(C), FDA is authorized to conduct surveys and other research relating to its responsibilities under the Federal, Food, Drug, and Cosmetic Act.

Respondents to this collection of information would be tobacco retailers and salesclerks.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
897	6,000	1	6,000	.2	1,200

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 22, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–33925 Filed 12–29–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0509]

Hoffmann-La Roche, Inc.; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Hoffmann-La Roche, Inc. The NADA provides for use of chlortetracycline Type A medicated article to make Type B or Type C medicated feeds. The sponsor requested the withdrawal of approval because the animal drug product is no longer manufactured or marketed.

EFFECTIVE DATE: January 9, 1998.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0212.

SUPPLEMENTARY INFORMATION: Hoffmann-La Roche, Inc., 340 Kingsland St., Nutley, NJ 07110–1199, is the sponsor of NADA 100–903 that provides for use of chlortetracycline Type A medicated articles to make Tpye B or Type C medicated feeds. The animal drug product had been subject to review under the National Academy of Sciences/National Research Council, Drug Efficacy Study Implementation Program, and it was currently subject to requirements for finalization under that program. By letter of August 20, 1997, the sponsor requested withdrawal of approval of the NADA because the animal drug product is no longer manufactured or marketed.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.48), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 100–903 and all supplements and amendments thereto is hereby withdrawn, effective January 9, 1998.

This product had not been the subject of a regulation published under section 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b). Therefore, an amendment to the animal drug regulations to reflect the withdrawal of approval is not required.

Dated: December 19, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–33922 Filed 12–29–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Developing U.S. Public Health Service Policy on Xenotransplantation; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing the following public workshop: Developing U.S. Public Health Service Policy on Xenotransplantation. The topic to be discussed is the current and evolving U.S. Public Health Service (U.S. PHS) policy on xenotransplantation. Xenotransplantation refers to any procedure that involves the use of live cells, tissues, and organs from a nonhuman animal source, transplanted or implanted into a human or used for ex vivo perfusion. The meeting is being sponsored by U.S. PHS agencies including FDA, National Institutes of Health, Centers for Disease Control and Prevention, and the Health Resources and Services Administration.

Date and Time: The public workshop will be held on January 21 and 22, 1998, 8 a.m. to 5 p.m.

Location: The public workshop will be held at the Natcher Auditorium, National Institutes of Health, 9000 Rockville Pike, Bldg. 45, Bethesda, MD.

Contact: Timothy W. Beth, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 301–827–6333, FAX 301–443–3874, or e-mail Beth@a1.cber.fda.gov.

SUPPLEMENTARY INFORMATION: The goals of the meeting include the following: (1) Describing the scope of current clinical trials in xenotransplantation; (2) exploring the potential public health benefits and risks of xenotransplantation; (3) presenting frameworks for the evaluation of ethical issues presented by xenotransplantation; (4) describing current and evolving PHS policy on xenotransplantation and the development of specific public health mechanisms to implement policy; such mechanisms may include, but are not limited to: (a) a revised U.S. PHS guideline on infectious disease issues in xenotransplantation; (b) the evolving regulatory framework for oversight of xenotransplantation; (c) the pilot xenotransplantation registry database; (d) the strategies for archiving biologic specimens for public health investigations; (e) the methods for ensuring public awareness of current issues and discussion of new developments in xenotransplantation; and (5) presenting international perspectives on xenotransplantation policy development. The meeting is open to all interested persons.

Registration: There is no fee to attend this meeting. To register for the meeting please contact Cody Bridges, Chris

Waddel, or Pamela Milan at 301–490–5500, e-mail ''cbridges@lcgnet.com'' or ''cwaddell@lcgnet.com'', or ''pmilan@lcgnet.com''. If you need special accomodations due to a disability, please contact Cody Bridges at least 7 days in advance.

Transcripts: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

Dated: December 23, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–33927 Filed 12–29–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Establishment of Prescription Drug User Fee Rates for Fiscal Year 1998; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of December 9, 1997 (62 FR 64849). The notice announced the rates for prescription drug user fees for Fiscal Year (FY) 1998. The document was published with an inadvertent editorial error. This document corrects that error.

DATES: The new fee rates were effective October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Michael E. Roosevelt, Office of Financial Management (HFA–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5088.

In FR Doc. No. 97–32166, beginning on page 64849 in the **Federal Register** of Tuesday, December 9, 1997, the following correction is made:

1. On page 64850, in the last column, in the table at the bottom of the page, and on page 64851, in the first column, in the the table at the top of the page, the heading of the second column ''Fee rates for FY 1997'' is corrected to read ''Fee rates for FY 1998''.

Dated: December 18, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–33800 Filed 12–29–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0401]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Export of Medical Devices—Foreign Letters of Approval'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 3, 1997 (62 FR 51872), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0264. The approval expires on November 30, 2000.

Dated: December 18, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–33794 Filed 12–29–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0380]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Importer's Entry Notice'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 22, 1997 (62 FR 49519), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0046. The approval expires on November 30, 2000.

Dated: December 18, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–33796 Filed 12–29–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0022]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Agreement for Shipment of Devices for Sterilization'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 4, 1997 (62 FR 46744), the agency announced

that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct
or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0131. The approval expires on November 30, 2000.

Dated: December 18, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–33798 Filed 12–29–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N–0048]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled, ''Sterility Requirements for Inhalation Solution Products'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 23, 1997 (62 FR 49638), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection and has assigned OMB control number 0910–0353. The approval expires on November 30, 2000.

Dated: December 18, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–33799 Filed 12–29–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92N–0251]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Electronic Records; Electronic Signatures'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 20, 1997 (62 FR 33660), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0303. The approval expires on August 31, 2000.

Dated: December 17, 1997

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–33801 Filed 12–29–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food And Drug Administration

[Docket No. 97D–0483]

Draft Guidance for Industry on Food-Effect Bioavailability and Bioequivalence Studies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Food-Effect Bioavailability and Bioequivalence Studies.'' The draft guidance is intended for sponsors of new drug applications (NDA's), abbreviated new drug applications (ANDA's) and abbreviated antibiotic applications (AADA's) who intend to conduct food-effect bioavailability (BA) and bioequivalence (BE) studies for oral immediate release and modified release dosage forms. The guidance provides information and recommendations on study design, data analysis, and labeling.

DATES: Written comments may be submitted on the draft guidance by March 2, 1998. General comments on the agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies ''Food-Effect Bioavailability and Bioequivalence Studies'' to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance document to the Dockets Management Branch (HFD–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Ameeta Parekh, Center for Drug Evaluation and Research (HFD–860), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5325.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled ''Food-Effect Bioavailability and Bioequivalence Studies.'' The draft guidance is intended to help sponsors of NDA's, ANDA's, and AADA's when conducting BA and BE studies with food for oral immediate release and modified release dosage forms.

The intake of food is known to alter gastrointestinal physiology, generally delaying gastric emptying, stimulating bile flow, altering the pH of gastric environment and the blood flow to the region. These factors can influence the BA (important in new drug and formulation situations) and BE (important in switchability of drug products) when drug products are coadministered with food. Food also may alter lumenal metabolism and can

physically or chemically interact with a drug substance. Altered BA of drug products can lead to dosage adjustments or, more commonly, to the provision of specific dosing instructions in relation to administration with meals. This draft guidance provides a general design for and recommends ways this information can be appropriately addressed in the labeling.

The draft guidance recommends that a food-effect assessment should be made early in drug development. It also recommends that subsequent studies following formulation changes may be eliminated provided that there is basis for assuming that the food-effect arises due to drug substance rather than formulation factors.

This draft guidance addresses situations when food-effect BA and BE studies should be considered and when these may not be important. It examines study considerations, such as general design, subject selection, formulation selection, test meal, treatment administration, sample collection, and data analysis. It also addresses issues related to labeling for food effects.

This draft guidance document represents the agency's current thinking on food-effect bioavailability and bioequivalence studies. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may submit written comments on the draft guidance document to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

An electronic version of this guidance is available on the World Wide Web at http://www.fda.gov/cder/guidance/index.htm.

Dated: December 18, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–33802 Filed 12-29-97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0433]

Preliminary Draft Guidance for Industry on In Vivo Bioequivalence Studies Based on Population and Individual Bioequivalence Approaches; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a preliminary draft guidance for industry entitled ''In Vivo Bioequivalence Studies Based on Population and Individual Bioequivalence Approaches.'' If this preliminary draft guidance becomes final, it will provide recommendations to sponsors of investigational new drug applications (IND's), new drug applications (NDA's), abbreviated new drug applications (ANDA's), and abbreviated antibiotic drug applications (AADA's) who intend to perform studies based on a comparison of pharmacokinetic metrics. If finalized, the guidance would replace a prior guidance entitled ''Statistical Procedures for Bioequivalence Studies Using a Standard Two-Treatment Crossover Design,'' which was published in July 1992. Because a transition to the approaches delineated in this document will require careful consideration, FDA is making it available as a preliminary draft.

DATES: Written comments may be submitted on the preliminary draft guidance document by March 2, 1998. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this preliminary draft guidance are available on the Internet at ''http://www.fda.gov/cder/guidance/index.htm.'' Written requests for single copies of the preliminary draft guidance for industry should be submitted to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the preliminary draft guidance to the Dockets Management Branch (HFD–305), Food and Drug Administration, 12420 Parklawn Dr., rm 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Mei-Ling Chen, Office of Clinical Pharmacology and Biopharmaceutics, Center for Drug Evaluation and Research (HFD–870), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5919, or

Rabindra N. Patnaik, Office of Generic Drugs, Center for Drug Evaluation and Research (HFD–651), 7500 Standish Pl., Food and Drug Administration, Rockville, MD 20855, 301–827–5847.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a preliminary draft guidance for industry entitled ''In Vivo Bioequivalence Studies Based on Population and Individual Bioequivalence Approaches.'' If it becomes final, this guidance for industry will provide recommendations to sponsors of IND's, NDA's, ANDA's, and AADA's who intend to perform in vivo bioequivalence studies based on a comparison of pharmacokinetic metrics, either prior to or following approval.

The definitions of ''bioavailability'' and ''bioequivalence;'' the requirements for submitting such data in NDA's, ANDA's, and supplements; and the types of in vivo studies that are acceptable to establish bioavailability and bioequivalence are set forth in 21 CFR part 320. These regulatory definitions and requirements reflect requirements in the Federal Food, Drug, and Cosmetic Act and other agency regulations.

Bioavailability and bioequivalence are usually measured by in vivo studies assessing metrics of a plasma or blood concentration-time curve to establish the rate and extent of absorption of an appropriate active drug/metabolite (bioavailability), or to compare the rate and extent of absorption of a test and reference formulation (bioequivalence).

In the July 1992 guidance for industry entitled ''Statistical Procedures for Bioequivalence Studies Using a Standard Two-Treatment Crossover Design,'' FDA recommended that a standard in vivo bioequivalence study design be based on administration of the test and reference products on separate occasions to healthy subjects, either in single or multiple doses, with random assignment to the two possible sequences of drug product administration.

Based on work performed during the last several years by scientists within and outside FDA, this preliminary draft guidance for industry recommends that the approach for determining average bioequivalence discussed in the 1992

guidance be replaced by two new statistical approaches termed ''population'' and ''individual'' bioequivalence.

In contrast to the standard bioequivalence approach, which focuses on assessing and comparing only population averages for a bioavailability metric of interest for a test and reference product, the population and individual bioequivalence approaches assess and compare both population averages and population variances for the metric.

This preliminary draft guidance recommends that the population bioequivalence approach be used by NDA sponsors who wish to assess bioequivalence during the investigational phase of drug development. The preliminary draft guidance recommends that the individual bioequivalence approach be used by sponsors of ANDA's and AADA's to assess bioequivalence between a generic and reference listed drug, or by sponsors of NDA's, ANDA's, and AADA's who, during the postapproval period, wish to reassess in vivo bioequivalence when a change of sufficient magnitude occurs in the formulation and/or manufacturing of the drug product. If finalized, this guidance would replace the 1992 guidance.

Because transition to the approaches delineated in this preliminary draft will require careful consideration, FDA is publishing it as a preliminary draft guidance. The agency hopes to engage the public in a discussion of the justification for and implications of the recommendations that are presented. This public discussion may include a number of activities, such as holding a public workshop, creating an expert panel, and other discussions and deliberations as appropriate. At the conclusion of this public discussion, which is expected to take at least several months, FDA may release the draft document for a second round of public comment. Despite the possibility that the draft guidance may be released again for comment, the public is encouraged to comment now on this preliminary version and, specifically, to provide information that supports or refutes the importance of its proposals.

Given the need for careful consideration of some of the recommendations in the preliminary draft, FDA does not recommend implementation of any of its provisions at this time.

This preliminary draft guidance for industry represents the agency's current thinking on in vivo bioequivalence studies based on population and individual bioequivalence approaches. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, at any time, submit written comments on the preliminary draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the preliminary draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 17, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–33795 Filed 12–29–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–667]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Alternate Quality Assessment *Survey; Form No.:* HCFA–667 (OMB# 0938–0650); *Use:* The HCFA–667 is used in lieu of an onsite survey for those Clinical Laboratories Improvement Amendment (CLIA) laboratories with good performance as determined by their last onsite survey. This form is designed to determine current CLIA compliance as well as prepare laboratories for future onsite surveys. This system rewards good performance and facilitates quality assurance. *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government; *Number of Respondents:* 4,000; *Total Annual Responses:* 4,000; *Total Annual Hours:* 10,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard Baltimore, Maryland 21244–1850.

Dated: December 18, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, Office of Information Services Information Technology Investment Management Group Division of HCFA Enterprise Standards.

[FR Doc. 97–33819 Filed 12–29–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1034–N]

Medicare Program; Request for Nominations for Members for the Practicing Physicians Advisory Council

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

ACTION: Notice.

SUMMARY: In accordance with section 1868(a) of the Social Security Act, this notice requests nominations from medical organizations representing physicians for individuals to serve on the Practicing Physicians Advisory Council. There will be four vacancies on February 28, 1998.

DATES: Nominations from medical organizations representing physicians will be considered if we receive them at the appropriate address, provided below, no later than 5 p.m. on January 30, 1998.

ADDRESSES: Mail or deliver nominations for membership to the following address: Health Care Financing Administration, Center for Health Plans and Providers, Office of Professional Relations, Attention: Jeffrey Kang, M.D., Executive Director, Practicing Physicians Advisory Council, Room 435–H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Jeffrey Kang, M.D., Executive Director, Practicing Physicians Advisory Council, (202) 690–7418.

SUPPLEMENTARY INFORMATION: Section 4112 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508), enacted on November 5, 1990, added a new section 1868 to the Social Security Act (the Act), which established the Practicing Physicians Advisory Council (the Council). The Council advises the Secretary (the Secretary) of the Department of Health and Human Services on proposed regulations and manual issuances related to physicians' services. An advisory committee created by the Congress, such as this one, is subject to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2).

Section 1868(a) of the Act requires that the Council consist of 15 physicians, each of whom must have submitted at least 250 claims for physicians' services under Medicare in the previous year. At least 11 Council members must be physicians as defined in section 1861(r)(1) of the Act; that is, State-licensed physicians of medicine or osteopathy. The other four Council members may include dentists, podiatrists, optometrists, and chiropractors. The Council must include both participating and nonparticipating physicians, as well as physicians practicing in rural and under served urban areas. In addition, section 1868(a) of the Act provides that nominations to the Secretary for Council membership must be made by medical organizations representing physicians.

This notice is an invitation to all organizations representing physicians to submit nominees for membership on the Council. Current members whose terms expire in 1998 will be considered for reappointment, if renominated. The Secretary will appoint new members to the Council from among those candidates determined to have the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

Each nomination must state that the nominee has expressed a willingness to serve as a Council member and must be accompanied by a short resume or description of the nominee's experience. To permit evaluation of possible sources of conflict of interest, potential candidates will be asked to provide detailed information concerning financial holdings, consultant positions, research grants, and contracts.

Section 1868(b) of the Act provides that the Council meet once each calendar quarter, as requested by the Secretary, to discuss proposed changes in regulations and manual issuances that relate to physicians services. Council members are expected to participate in all meetings.

Section 1868(c) of the Act provides for payment of expenses and a per diem allowance for Council members at a rate equal to payment provided members of other advisory committees. In addition to making these payments the Department of Human Services provides management and support services to the Council.

(Section 1868 of the Social Security Act (42 U.S.C. 1395ee); 5 U.S.C. App.2)

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

Dated: December 23, 1997.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 97–33939 Filed 12–29–97; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting of the Advisory Committee to the Director

Pursuant to Public Law 92–463, notice is hereby given of a telephone conference call meeting of the Advisory Committee to the Director, National Cancer Institute, January 12, 1998, at the National Institutes of Health, Building 31, Room 11A10, 9000 Rockville Pike, Bethesda, MD 20892.

The entire meeting will be open to the public from 10:00 a.m. to 11:00 a.m. Attendance by the public is limited to space available. Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below.

Name of Committee: Advisory Committee to the Director.

Contact Person: Susan J. Waldrop, Executive Secretary, Federal Building, Room 312, Bethesda, MD 20892, (301) 496–1458.

Date of Meeting: January 12, 1998.

Place of Meeting: National Institutes of Health, Building 31, Room 11A10, 9000 Rockville Pike, Bethesda, MD 20892.

Open: 10:00 a.m. to 11:00 a.m.

Agenda: To update the Committee on the progress of the NCI working groups.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(CATALOG OF FEDERAL DOMESTIC ASSISTANCE PROGRAM NUMBERS: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: December 22, 1997.

LaVeen Ponds,

Acting Committee Management Officer, NIH.

[FR Doc. 97–33943 Filed 12–29–97; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the National Center for Research Resources Initial Review Group and the Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities, National Center for Research Resources (NCRR), for February 1998. These meetings will be open to the public as indicated below to discuss program planning; program accomplishments; administrative matters such as previous meeting minutes; the report of the Director, NCRR; review of budget and legislative updates; and special reports or other issues relating to committee business. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance

with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Kathy Kaplan, Public Affairs Specialist, NCRR, National Institutes of Health, One Rockledge Centre, Room 5146, 6705 Rockledge Drive, MSC 7965, Bethesda, Maryland 20892–7965, 301–435–0888, will provide summaries of meetings and rosters of committee members. Other information pertaining to the meetings can be obtained from the Scientific Review Administrator indicated. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Scientific Review Administrator listed below, in advance of the meeting.

Name of Committee: National Center for Research Resources Initial Review Group—Research Centers in Minority Institutions Review Committee.

Date of Meeting: February 9, 1998.

Place of Meeting: Residence Inn, Montgomery I Room, 7335 Wisconsin Avenue, Bethesda, MD 20814, 301–718–0200.

Open: February 9, 8:30 a.m.–10:30 a.m.

Closed: February 9, 10:30 a.m.—Until Adjournment.

Scientific Review Administrator: Dr. John Lymangrover, National Institutes of Health, One Rockledge Centre, Room 6018, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892–7965; Telephone: 301–435–0820.

Name of Committee: National Center for Research Resources Initial Review Group—General Clinical Research Centers Review Committee.

Date of Meeting: February 10–13, 1998.

Place of Meeting: Hyatt Regency Bethesda, Fellin's Bar Conference Room, One Bethesda Metro Center, Bethesda, MD 20814, 301–357–6406.

Closed: February 10—8 a.m.—Until Adjournment.

Scientific Review Administrator: Dr. Charles Hollingsworth, National Institutes of Health, One Rockledge Centre, Room 6018, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892–7965; Telephone: 301–435–0806.

Name of Committee: National Center for Research Resources Initial Review Group—Comparative Medicine Review Committee.

Date of Meeting: February 24–25, 1998.

Place of Meeting: Holiday Inn Bethesda, Delaware Room, 8120 Wisconsin Avenue, Bethesda, MD 20814, 301–652–2000.

Open: February 24, 8 a.m.–9:30 a.m.

Closed: February 24, 9:30 a.m.—Until Adjournment.

Scientific Review Administrator: Dr. Raymond O'Neill, National Institutes of Health, One Rockledge Centre, Room 6018, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892–7965; Telephone: 301–435–0820.

Name of Committee: Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities.

Date of Meeting: February 25, 1998.

Place of Meeting: The Bethesda Ramada, Ambassador One Room, 8400 Wisconsin Avenue, Bethesda, MD 20814, 301–654–1000.

Closed: February 25, 8 a.m.—Until Adjournment.

Scientific Review Administrator: Dr. D.G. Patel, National Institutes of Health, One Rockledge Centre, Room 6018, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892–7965; Telephone: 301–435–0824.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Laboratory Animal Sciences and Primate Research; 93.333, Clinical Research; 93.389, Research Centers in Minority Institutions; 93.167, Research Facilities Improvement Program; 93.214 Extramural Research Facilities Construction Projects, National Institutes of Health)

Dated: December 22, 1997.

LaVeen M. Ponds,

Program Analyst.

[FR Doc. 97–33942 Filed 12–29–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting: Microbiology and Infectious Diseases Research Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Microbiology and Infectious Diseases Research Committee, National Institute of Allergy and Infectious Diseases, on February 11–13, 1998 at the Holiday Inn Chevy Chase, Mayfair Room, 5520 Wisconsin Avenue, Bethesda, Maryland.

The meeting will be open to the public from 8 a.m. to 9 a.m. on February 11, to discuss administrative details relating to committee business and program review, and for a report from the Acting Director, Division of Extramural Activities, which will include a discussion of budgetary matters. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9 a.m. until recess on February 11, from 9 a.m. until recess on February 12, and from 9 a.m. until adjournment on February 13. These applications, proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C26, National Institutes of Health, Bethesda, Maryland, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr. Gary Madonna, Scientific Review Administrator, Microbiology and Infectious Diseases Research Committee, NIAID, NIH, Solar Building, Room 4C21, Rockville, Maryland 20892, telephone 301–496–3528, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: December 22, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–33940 Filed 12–29–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute on Drug Abuse (NIDA) Special Emphasis Panel meeting.

Purpose/Agenda: To review and evaluate contract proposals.

Name of Committee: NIDA Special Emphasis Panel (SBIR Project—''Drug Supply Services Support'').

Date: January 15, 1998.

Time: 9:00 a.m.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Mr. Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857; Telephone (301) 443–1644.

The meeting will be closed in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Scientist Development, Research Scientist Development, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health)

Dated: December 22, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–33941 Filed 12–29–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting of the Biotechnology Information Subcommittee of the Biomedical Library Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the conference call of the Biotechnology Information subcommittee of the Biomedical Library Review Committee on January 7, 1998, convening at 1:30 p.m. at the National Library of Medicine, Building 38, Room 5N–519, 8600 Rockville Pike, Bethesda, Maryland

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., and section 10(d) of Public Law 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Sharee Pepper, Health Scientist Administrator, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–4253, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.879—Medical Library Assistance, National Institutes of Health.)

Dated: December 22, 1997.

LaVeen M. Ponds,

Acting Committee Management Officer, NIH.

[FR Doc. 97–33944 Filed 12–29–97; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 to provide the opportunity for public comment on proposed information collection activities, the Substance Abuse and Mental Health Services Administration publishes periodic summaries of proposed activities. To request more information on the proposed activities or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–0525.

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.

Evaluation of Opioid Treatment Program Accreditation Project—New—SAMHSA's Center for Substance Abuse Treatment (CSAT), in conjunction with other Federal Agencies, is involved in planning and developing accreditation processes for opioid treatment programs (OTPs). The proposed project will evaluate the process, costs, and administrative and clinical impacts of the OTP accreditation process, and will estimate the costs of national implementation of an accreditation system. In collaboration with accreditation and technical assistance contractors, evaluation activities will be conducted at a sample of 90 treatment sites, with a control group of 30 treatment sites. Measures will include program structure and operation, costs, clinical practice, staff appraisal, patient satisfaction and treatment outcomes. The estimated annualized burden for two-year data collection period is summarized below.

	Number of respondents	Number of responses per respondent	Average burden per response (minutes)	Total burden hours	Annualized burden hours
Treatment Staff (Questionnaires)	2200	2	50	3667	1833
Treatment Staff (Focus Groups)	900	1	90	1350	675
Patients	4800	2	15	2400	1200

Send comments to Deborah Trunzo, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 12, 1997.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 97–33850 Filed 12–29–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4189–N–02]

Announcement of Funding Awards for Fiscal Year 1997 Community Development Work Study Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for the Fiscal Year 1997 Community Development Work Study Program (CDWSP). The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to attract economically disadvantaged and minority students to careers in community and economic development, community planning and community management, and to provide a cadre of well-qualified professionals to plan, implement, and administer local community development programs.

SOURCES OF FURTHER INFORMATION: Prospective students interested in participating in the CDWSP should contact directly the grantees listed below representing the colleges or universities that they would be interested in attending; HUD does not directly accept student applications or accept students into the program. Universities, Colleges, States and areawide planning organizations interested in receiving a grant application kit (which contains detailed information about the CDWSP) or a brief written program summary should contact HUD USER, P.O. Box 6091, Rockville, MD 20849, (800)–245–2691, and should specifically reference the Community Development Work Study Program. Persons having technical questions about the program should contact John M. Hartung, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8130, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3061, extension 261. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on (800) 877–8399, or 202–708–9300. (Telephone numbers, other than the two ''800'' numbers, are not toll free.)

SUPPLEMENTARY INFORMATION: The CDWSP is administered by the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. The Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education and creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The CDWSP was enacted in the Housing and Community Development Act of 1988. (Earlier versions of the program were funded by the Community Development Block Grant Technical Assistance Program from 1982 through 1987 and the Comprehensive Planning Assistance Program from 1969 through 1981.) Eligible applicants include institutions of higher education having qualifying academic degrees, and States and areawide planning organizations who apply on behalf of such institutions. The CDWSP funds graduate programs only. Each participating institution of higher education is funded for a minimum of three students and a maximum of five students under the CDWSP. The CDWSP provides each participating student up to $9,000 per year for a work stipend (for internship-type work in community building) and $5,000 per year for tuition and additional support (for books and travel related to the academic program). Additionally, the CDWSP provides the participating institution of higher education with an administrative allowance of $1,000 per student per year.

The Catalog of Federal Domestic Assistance number for this program is 14.512.

On March 4, 1997 (62 FR 9897) HUD published a Notice of Funding Availability (NOFA) announcing the availability of $3 million in FY 1997 funds for the CDWSP. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications announced below, and in accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as set forth below.

List of Awardees for Grant Assistance Under the FY 1997 Community Development Work Study Program; Funding Competition, by Name, Address, Phone Number, Grant Amount and Number of Students Funded

New England

1. Massachusetts Institute of Technology, Professor Langley C. Keyes, Massachusetts Institute of Technology, Department of Urban Studies & Planning, 103 Massachusetts Avenue, Room 9–517, Cambridge, MA 02139, (617) 253–1540. Grant: $90,000, for three students.

New York/New Jersey

2. New School for Social Research, Professor James A. Krauskopf, New School for Social Research, Graduate School of Management and Urban Policy, 66 Fifth Avenue, Seventh Floor, New York, NY 10011, (212) 229–5388. Grant: $113,896, for four students.

3. Hunter College of CUNY, Dr. William J. Milczarski, Hunter College of CUNY, Graduate Program in Urban Planning, 695 Park Avenue, New York, NY 10021, (212) 772–5601. Grant: $120,000 for four students.

4. Columbia University, Professor Steven A. Cohen, Columbia University, School of International and Public Affairs, 420 West 118th Street, Room 1417, New York, NY 10027, (212) 854–2167. Grant: $120,000 for four students.

Mid-Atlantic

5. University of Pittsburgh, Professor James P. DeAngelis, University of Pittsburgh, Graduate School of Public International Affair, 3R24 Forbes Quandrangle, Pittsburgh, PA 15260, (412) 648–7663. Grant: $77,400 for three students.

6. University of Pennsylvania, Professor Anthony R. Tomazinis, University of Pennsylvania, Department of City & Regional Planning, 127 Meyerson, 210 South 34th Street, Philadelphia, PA 19104–6311, (215) 898–8481. Grant: $120,000 for four students.

7. Metropolitan Washington Council of Governments, Ms. Annette Abbott Pope, Human Services Planning & Public Safety, 777 North Capitol Street, NE, Suite 300, Washington, DC 20002,

(202) 962–3277. Grant: $360,000 for three students each at University of Maryland, University of the District of Columbia, Southeastern University, George Mason University.

Southeast

8. University of Memphis, Professor David N. Cox, University of Memphis, Center for Urban Research & Extension, PO Box 526108, Memphis, TN 38152, (901) 678–4186. Grant: $118,232 for four students.

9. Alabama A&M University, Professor Constance Jordan-Wilson, Alabama A&M University, Department of Community Planning & Urban Studies, P.O. Box 206, Normal, AL 35762, (205) 851–5425. Grant: $118,304 for four students.

10. University of Alabama at Birmingham, Ms. Rebecca Falkenberry, University of Alabama at Birmingham, Center for Urban Affairs, 901 South 15th Street, Suite 141, Birmingham, AL 35294, (205) 934–3500. Grant: $119,264 for four students.

11. Eastern Kentucky University, Professor Terry Busson, Eastern Kentucky University, Department of Government, McCreary 113, Richmond, KY 40475, (606) 622–1019. Grant: $113,040 for four students.

12. University of Tennessee at Chattanooga, Ms. Diane Miller, University of Tennessee at Chattanooga, Office of Graduate Studies, 615 McCallie Avenue, Chattanooga, TN 37403, (423) 755–4431. Grant: $120,000 for four students.

Midwest

13. Indiana University, Dr. Leda McIntyre Hall, Indiana University, School of Public and Environmental Affairs, 1700 Mishawaka Avenue, Room A–240, South Bend, IN 46634–7111, (219) 237–4803. Grant: $99,380 for four students.

14. Mankato State University, Professor Robert A. Barrett, Mankato State University, Urban & Regional Studies Institute, Box 25, Mankato, MN 56002, (507) 389–1714. Grant: $116,016 for four students.

15. Michigan State University, Dr. Herbert P. Norman Jr., Michigan State University, Urban & Regional Planning Program, 201 UPLA Building, East Lansing, MI 48824–1221, (517) 353–0677. Grant: $120,000 for four students.

16. University of Wisconsin at Milwaukee, Mr. Stephen Percy, University of Wisconsin at Milwaukee, Center for Urban Initiative, P.O. Box 413, Milwaukee, WI 53201, (414) 229–5916. Grant: $119,400 for four students.

Southwest

17. North Central Texas Council of Governments, Mr. R. Michael Eastland, P.O. Box 5888, Arlington, TX 76005–5888, (817) 695–9101. Grant: $262,464 for three student each at University of North Texas, University of Texas at Dallas, University of Texas at Arlington.

Great Plains

18. University of Kansas, Dr. Steven Maynard-Moody, University of Kansas, Department of Public Administration, 318 Blake Hall, Lawrence, KS 66045–2157, (913) 864–3527. Grant: $120,000 for four students.

19. Kansas State University, Professor Robert E. Burns, Kansas State University, Department of Landscape Architecture Regional & Community Planning, 302 Seaton Hall, Manhattan, KS 66506, (913) 532–5961. Grant: $117,100 for four students.

20. Iowa State University, Professor Riad G. Mahayni, Iowa State University, Department of Community & Regional Planning, 126 Design, Ames, IA 50011–3090, (515) 294–8525. Grant: $116,156 for four students.

Northwest/Alaska

21. University of Washington, Professor Donald W. Allen, University of Washington, Department of Urban and Regional Planning, Box 355754, Seattle, WA 98105, (206) 543–4043. Grant: $120,000, for four students.

Pacific/Hawaii

22. University of California at Berkeley, Dr. Victor Rubin, University of California at Berkeley, Department of Urban & Regional Development, 316 Wurster Hall, Berkeley, CA 94720, (510) 643–9103. Grant: $120,000 for four students.

Dated: December 19, 1997.

Paul A. Leonard,

Assistant Secretary for Policy Development and Research.

[FR Doc. 97–33876 Filed 12–29–97; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Revision of Recovery Plan for the Florida Panther

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to revise recovery plan.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces its intent to revise the recovery plan for the endangered Florida panther, *Puma (Felis) concolor coryi.* The Service established a Recovery Team comprised of key individuals and scientists involved in the Florida panther recovery program to guide the revision process. Additional opportunities for public review and comment will be available when the revised plan is in draft form.

DATES: Comments from all interested parties must be received by March 2, 1998.

ADDRESSES: Comments and materials concerning the recovery plan revision should be sent to Dennis B. Jordan, Recovery Team Leader, U.S. Fish and Wildlife Service, P.O. Box 110450, Gainesville, Florida 32611–0450. Copies of the current recovery plan are available at the same address. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis B. Jordan at the above address, (telephone 352/846–0546; facsimile 352/846–0841.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals or plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recognizing the recovery levels for downlisting or delisting them, and estimate time and costs for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The species considered in this recovery plan revision is the Florida panther, *Puma (Felis) concolor coryi.* Historically ranging throughout most of the southeast U.S., the Florida panther has been reduced to a single known wild population estimated to number 30 to 50 adults. This population utilizes approximately two million acres of habitat on public and privately owned lands in south Florida. Threats to the panther are generally related to factors associated with its habitat—availability, destruction, modification, fragmentation, contamination and the types and levels of human activities taking place within habitat areas; and, demographic and genetic factors associated with isolation, population reductions and inbreeding within the small population.

Previous Federal Action

This proposed revision represents the second major revision of the recovery plan since its initial approval by the U.S. Fish and Wildlife Service on December 17, 1981. The first major revision was approved on June 22, 1987. Additionally, a minor revision to incorporate a task to address genetic restoration and management was approved on March 13, 1995.

Public Comments Solicited

The current Recovery Team elected to expand involvement in the revision process to include other entities; those considered to be potential ''stakeholders'' in the panther recovery program. Potential stakeholders may represent interests of Native Americans, landowners, conservation organizations, hunters, agriculture, timber, animal rights, property rights, public agencies, education/public outreach, development/real estate, etc.

The Service solicits written input regarding suggested recovery actions/tasks that should be considered in drafting the revised recovery plan. All comments received by the date specified above will be considered prior to drafting the revised plan. Additional opportunities for public review and comment will be available when the revised plan is in draft form.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: December 11, 1997.

David Hankla,

Field Supervisor.

[FR Doc. 97–33811 Filed 12–29–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Endangered Species Act Incidental Take Permit for the Meadowlark Estates Project in San Diego County, CA

AGENCY: Fish and Wildlife Service.

ACTION: Notice of availability.

SUMMARY: SunCal Companies has applied to the Fish and Wildlife Service for a permit to incidentally take the threatened coastal California gnatcatcher (*Polioptila californica californica*) under the authority of section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The permit would authorize the incidental take of one pair of gnatcatchers and 12.3 acres of its habitat in the City of San Marcos, San Diego County, California in conjunction with urban development. As part of its permit application, SunCal Companies has prepared a Habitat Conservation Plan (Plan). This notice announces the availability of the Plan and an Environmental Assessment, and describes the proposed action and possible alternatives, solicits written comments, and identifies the Service official to whom questions and comments concerning the Service's proposed action to issue the permit may be directed.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and National Environmental Policy Act regulations (40 CFR 1506.6). All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

DATES: Written comments on the Plan and Environmental Assessment should be received by the Service on or before January 29, 1998.

ADDRESSES: Comments regarding the permit application or adequacy of the Environmental Assessment should be addressed to the Field Supervisor, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California 92008. Written comments may be sent by facsimile to telephone (760) 431–9618.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Vanderwier, Fish and Wildlife Biologist, at the above Carlsbad address; telephone (760) 431–9440. Individuals wishing copies of the permit application or Environmental Assessment for review should immediately contact the above office. Documents will also be available for public inspection by appointment during normal business hours (8 a.m. to 12 p.m. and 1 p.m. to 5 p.m.) Monday through Friday at the above Carlsbad address.

SUPPLEMENTARY INFORMATION: Section 9 of the Endangered Species Act and Federal regulation prohibit the ''taking'' of a species listed as endangered or threatened. However, the Service, under limited circumstances, may issue permits to ''incidentally take'' listed species, which is take that is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32; regulations governing permits for endangered species are promulgated in 50 CFR 17.22.

The Service has under consideration the approval of the Plan and issuance of an Endangered Species Act incidental take permit for the Meadowlark Estates project, a 198.1-acre residential development, in the City of San Marcos, San Diego County, California. The Plan was prepared by HELIX Environmental Planning, Inc., and addresses the loss of 12.3 acres of Diegan coastal sage scrub habitat for up to one pair of coastal California gnatcatchers as a result of constructing 220 single-family estates and 62 single-family homes on approximately 125 acres. Mitigation measures in the Plan include on-site preservation of Diegan coastal sage scrub and other native plant communities, restoration of orchards and manufactured slopes by hydroseeding with coastal sage scrub plant species, and off-site acquisition of 16.35 acres of land in a key location within a regional open space corridor. A Negative Declaration, prepared pursuant to the California Environmental Quality Act, was certified for this project by the City of San Marcos City Council on May 14, 1996.

The Plan and Environmental Assessment consider six alternatives including the Plan Alternative, a No Action Alternative and alternatives of larger and lesser scope, four of which were selected for detailed analysis.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and the National Environmental Policy Act of 1969 regulations (40 CFR 1506.6). The Service will evaluate the application, associated documents, and submitted comments to determine whether the application meets the requirements of the National Environmental Policy Act regulations and section 10(a) of the Endangered Species Act. If it is determined that the requirements are met, a permit will be issued for the incidental take of the

listed species. The final permit decision will be made no sooner than 30 days from the date of this notice.

Dated: December 22, 1997.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–33848 Filed 12–29–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability; Addendum #1 to the Assessment Plan: Lower Fox River/Green Bay Natural Resource Damage Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 30-day comment period.

SUMMARY: Notice is given that the document entitled: ''Assessment Plan Addendum: Lower Fox River/Green Bay NRDA'' (''The Addendum'') will be available for public review and comment on the date of publication in the **Federal Register**.

The assessment, including the activities addressed in this addendum, will be conducted in accordance with guidance of the Natural Resource Assessment Regulations found at 43 CFR Part 11, to the extent applicable. The public review to the Addendum announced by this Notice is provided for in 43 CFR 11.32(c).

Interested members of the public are invited to review and comment on the Addendum. Copies of the Addendum, and the ''Assessment Plan: Lower Fox River/Green Bay NRDA'' (''The Plan'') issued on August 23, 1996 (FR Doc. 96–21520), can be requested from the address listed below. All written comments will be considered and included in the Report of Assessment, at the conclusion of the assessment process.

DATES: Written comments on the Addendum must be submitted on or before January 29, 1998.

ADDRESSES: Requests for copies of the Addendum and/or the Plan may be made to: Frank Horvath, U.S. Fish and Wildlife Service, Region 3 (ATTN: ES/EC–NRDA), B.H.W. Federal Building, 1 Federal, Ft. Snelling, MN 55111–4096.

SUPPLEMENTARY INFORMATION: The purpose of this natural resource damage assessment is to confirm and quantify the suspected injuries to natural resources in the Lower Fox River, Green Bay, and Lake Michigan environment resulting from exposure to hazardous substances released by area paper mills and other potential sources. It is suspected that this exposure has caused injury and resultant damages to trustee resources. The injury and resultant damages will be assessed under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, and the Clean Water Act, as amended. The Addendum addresses additional data collection activities that will be undertaken to provide additional information.

William F. Hartwig,

Regional Director, Region 3 U.S. Fish and Wildlife Service.

[FR Doc. 97–33804 Filed 12–29–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Technology Transfer Act of 1986

AGENCY: United States Geological Survey, Interior.

ACTION: Notice of proposed cooperative research and development agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is contemplating entering into a Cooperative Research and Development Agreement (CRADA) with GEORGIA-PACIFIC CORPORATION to evaluate potential reproductive effects of papermill effluents in largemouth bass.

INQUIRIES: If any other parties are interested in similar activities with the USGS, please contact: Timothy S. Gross, PhD, USGS-BRD Florida Caribbean Science Center, 7920 NW 71st St, Gainesville, FL, 32563.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: December 17, 1997.

Don W. Minnich,

Acting Chief Biologist.

[FR Doc. 97–33813 Filed 12–29–97; 8:45 am]

BILLING CODE 4210–31–M

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Technology Transfer Act of 1986

AGENCY: United States Geological Survey, Interior.

ACTION: Notice of proposed cooperative research and development agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is contemplating entering into a Cooperative Research and Development Agreement (CRADA) with GEORGIA-PACIFIC CORPORATION to evaluate potential endocrine-disrupting effects of contaminants in largemouth bass from the lower St. John's River basin.

INQUIRIES: If any other parties are interested in similar activities with the USGS, please contact: Timother S. Gross, PhD, USGS–BRD Florida Caribbean Science Center, 7920 NW 71st St. Gainesville, FL 32563.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: December 17, 1997.

Don W. Minnich,

Acting Chief Biologist.

[FR Doc. 97–33814 Filed 12–29–97; 8:45 am]

BILLING CODE 4210–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–08–1220–00: GP8–0055]

Notice of Meeting of Advisory Board for the National Historic Oregon Trail Interpretive Center

AGENCY: National Historic Oregon Trail Interpretive Center, Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is given that a meeting of the Advisory Board for the National Historic Oregon Trail Interpretive Center will be held on Thursday, January 22, 1998 from 8 a.m. to 4:00 p.m. at the Best Western Sunridge Inn, 1 Sunridge Lane, Baker City, Oregon 97814.

At an appropriate time, the Board will recess for approximately one hour for lunch. Public comments will be received from 2:00 p.m. to 2:30 p.m., January 22, 1998. Topics to be discussed area the Interpretive Center's budget and the process in which the Advisory Board can be involved. Dr. John Hunt, Chair of the Department of Resource Recreation and Tourism, University of Idaho, will give a presentation.

DATES: The meeting will begin at 8:00 a.m. and run to 4:00 p.m., January 22, 1998.

ADDRESSES: The meeting will take place at the Best Western Sunridge Inn, One Sunridge Lane, Baker City, Oregon.

FOR FURTHER INFORMATION CONTACT: David B. Hunsaker, Bureau of Land Management, National Historic Oregon Trail, Interpretive Center, PO Box 987,

Baker City, OR 97814 (Telephone 541–523–1845).

Lynn P. Findley,

Assoc. District Manager (Acting), Vale District.

[FR Doc. 97–33807 Filed 12–29–97; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–050–1020–00]

Front Range Resource Advisory Council (Colorado) Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix, notice is hereby given that the next meeting of the Front Range Resource Advisory Council (Colorado) will be held on January 15, 1998 in Canon City, Colorado.

The meeting is scheduled to begin at 9:15 a.m. at the Holycross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado. The primary topic of the meeting will be an update on implementation of the Guidelines for Livestock Grazing Management.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council at 9:30 a.m. or written statements may be submitted for the Council's consideration. The District Manager may limit the length of oral presentations depending on the number of people wishing to speak.

DATES: The meeting is scheduled for Thursday January 15, 1998 from 9:15 a.m. to 4 p.m.

ADDRESSES: Bureau of Land Management (BLM), Canon City District Office, 3170 East Main Street, Canon City, Colorado 81212; Telephone (719) 269–8500; TDD (719) 269–8597.

FOR FURTHER INFORMATION CONTACT: Ken Smith at (719) 269-8553.

SUPPLEMENTARY INFORMATION: Summary minutes for the Council meeting will be maintained in the Canon City District Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: December 16, 1997.

Donnie R. Sparks,

District Manager.

[FR Doc. 97–33817 Filed 12–29–97; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–057–1220–00]

Temporary Road Closures and Permanent Road Closure

SUMMARY: Notice is hereby given in accordance with CFR 8364.1 of the following road closures and restrictions.

Temporary Road Closures: The following Bureau of Land Management (BLM) roads in Fremont and Teller Counties will be temporarily closed to motorized vehicle use to protect roads and fragile resources during periods of wet weather conditions, primarily occurring in the spring and winter.

Fremont County roads include:

Garden Park Fossil Area, located approximately 8 miles north of Canon City, CO off of County Road 9.

Oil Well Flats (#5940, #5941, #5950, #5955)

Dinosaur Flats (#5935, #5945)

Penrose Chaining Area, located approximately 3 miles north of Penrose, CO off of County Road 127.

Penrose Chaining (#6102, #6105, #6106)

Grand Canyon Hills Area, located 1 mile south of the Royal Gorge Bridge & Park off of the Temple Canyon Road, County Road 3.

Grand Canyon Hills (#6095, #6100)

The Banks & Sand Gulch Climbing Area, located approximately 11 miles north of Canon City, CO just off of Shelf Road, County Road 9.

Sand Gulch (#5820, #5810)
Espinosa Gulch (#5815, #5825, #5830)

Deer Haven Ranch Area, located off of the High Park Road, Fremont County Road 11.

Wilson Creek Road (#5827)
Thompson Mtn. Road (#5828)
Deer Park Trail Road (#5826)

Kerr Gulch Area, located approximately 5 miles south of Howard, CO off of Highway 50.

Kerr Gulch Road (#6110, #6115, #6116, #6117)

Teller County roads include: Booger Red Hill Area, located approximately 7 miles west of Victor, CO off the High Park Road, Teller County Road 112.

Booger Red Hill (#5808)

Permanent Road Closure: The following Bureau of Land Management (BLM) non-system road located in Fremont County will be permanently closed to protect fragile soils, a sensitive plant species, and to prevent vehicle trespass onto private lands. The road to be closed is about ⅓ mile in length and is located within the Garden Park Fossil Area, off of the Oil Well Flats Road #5940: T.17 S., R.70 W., Sections 26 N½NW¼, 27 SE¼NE¼. The road will be gated and signed.

DATES: These closures are effective December 22, 1997 and shall remain in effect unless revised, revoked or amended.

ADDRESSES: Comments can be directed to the Area Manager, Royal Gorge Resource Area, 3170 East Main Street, Canon City, CO 81212.

FOR FURTHER INFORMATION CONTACT: Area Manager at the above address, or call (719)269–8500.

SUPPLEMENTARY INFORMATION: Temporary Road Closure: Roads will be reopened to travel when dry soil conditions allow. Temporary and Permanent Road Closures do not apply to emergency, law enforcement, and federal or other government vehicles while being used for official or emergency purposes, or to any vehicle whose use is expressly authorized or otherwise officially approved by BLM. Violation of this order is punishable by fine of up to $5,000 and/or imprisonment for up to one year as defined in U.S.C. 18 3571. Notice of this closure and a map will be posted at the Royal Gorge Resource Area & Canon City District Office.

Donnie R. Sparks,

District Manager.

[FR Doc. 97–33815 Filed 12–29–97; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR 53985; OR–080–08–1430–01: G8–0064]

Realty Action; Proposed Direct Sale

The following described public land has been examined and determined to be suitable for transfer out of Federal ownership by direct sale under the authority of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976, as amended (90 Stat. 2750; 43 U.S.C. 1713 and 90 Stat. 2757; 43 U.S.C. 1719), at not less than the appraised fair market value:

Willamette Meridian, Oregon

T. 7 S., R. 2 E.,

Sec. 17, That portion of the NW¼NE¼ which, when surveyed, will likely be designated as ''Lot 2''.

The above-described parcel contains 0.24 acre, more or less, in Marion County.

The parcel will not be offered for sale until at least 60 days after publication of this notice in the **Federal Register**.

The fair market value of the parcel has not yet been determined. Anyone interested in knowing the value may request this information from the address shown below.

The above-described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above-cited statute, for 270 days or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

The parcel is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency. No significant resource values will not affected by this transfer. The sale is consistent with the Salem District Resource Management Plan and the public interest will be served by offering this parcel for sale.

The parcel is being offered only to Konstantin Verbin, fee owner of the adjoining property (Tax Lot 800, Map 7 2E 08D). The subject parcel contains a water well, pumphouse, and pipeline that is owned by Mr. Verbin. Use of the direct sale procedures authorized under 43 CFR 2711.3–3, will avoid an inappropriate land use pattern and recognize equities of the individual involved.

The terms, conditions, and reservations applicable to the sale are as follows:

1. Mr. Verbin must provide proof that he is a citizen of the United States and is 18 years of age or over.

2. Mr. Verbin will be required to submit a deposit of either cash, bank draft, money order, or any combination thereof for not less than the appraised value.

3. The mineral interests being offered for conveyance have no known mineral value. A bid will also constitute an application for conveyance of the mineral estate, in accordance with Section 209 of the Federal Land Policy and Management Act. A nonrefundable $50.00 filing fee will be required from Mr. Verbin for purchase of the mineral estate.

4. The bargain and sale deed will be subject to:

a. Rights-of-way for ditches or canals will be reserved to the United States under 43 U.S.C. 945; and

b. All valid existing rights and reservations of record.

Detailed information concerning the sale is available for review at the Salem District Office, address above.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Cascades Area Manager, address above. Any adverse comments will be reviewed by the Salem District Manager, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of this Interior.

Richard C. Prather,

Cascades Area Manager.

[FR Doc. 97–33812 Filed 12–29–97; 8:45 am]

BILLING CODE 4310–33–M

NATIONAL PARK SERVICE

Death Valley National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Death Valley National Park Advisory Commission will be held January 7 and 8, 1998; assemble at 9:00 AM in the Death Valley National Park Visitor's Center Auditorium, Death Valley, California.

The main agenda will include:

- Park Direction and Mission
- Planning Process
- Management of Feral Burros
- Saline Valley Overview
- Mining Management
- Fee Demonstration Program
- Wilderness Management
- Grazing Management

The Advisory Commission was established by Pub. L. #03–433 to provide for the advice on development and implementation of the General Management Plan.

Members of the Commission are Janice Allen, Kathy Davis, Michael Dorame, Mark Ellis, Pauline Esteves, Stanley Haye, Sue Hickman, Cal Jepson, Joan Lolmaugh, Gary O'Connor, Alan Peckham, Michael Prather, Robert Revert, Wayne Schulz, and Gilbert Zimmerman.

This meeting is open to the public.

Richard H. Martin,

Superintendent, Death Valley National Park.

[FR Doc. 97–33908 Filed 12–29–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 20, 1997. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by January 14, 1998.

Patrick W. Andrus,

Keeper of the National Register.

COLORADO

Fremont County

Mount Saint Scholastica Academy, East Building, 615 Pike Ave, Canon City, 97001646

GEORGIA

Rockdale County

Almand—O'Kelley—Walker House, 981 Green St., Conyers, 97001647

Twiggs County

Bullard—Everett Farm Historic District, Address Restricted, Jeffersonville vicinity, 97001648

IDAHO

Boundary County

Soderling, Russell and Pearl, House, 217 W. Madison St., Bonners Ferry, 97001650

Latah County

Bank of Juliaetta, 301 Main St., Juliaetta, 97001649

LOUISIANA

Webster Parish

Shadow House, LA 531, N of Dubberly, Dubberly vicinity, 97001651

MINNESOTA

Hennepin County

Thompson Summer House, 3012 Shoreline Dr., Minnetonka Beach, 97001652

NEW MEXICO

Bernalillo County

Simmons Building, 400 Gold Ave., SW, Albuquerque, 97001653

PENNSYLVANIA

Mercer County

Lindsey, Christiana, House, 313 E. Butler St., Mercer Borough, 97001655

Philadelphia County

Grace Church, Mt. Airy, 224 E. Gowen Ave., Philadelphia, 97001654

[FR Doc. 97–33782 Filed 12–29–97; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Milltown Hill Project, Douglas County, Oregon

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a supplement to the final environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) proposes to prepare a supplement to the Final Environmental Impact Statement (FEIS) for the Milltown Hill Project. The FEIS for the project was filed with the Environmental Protection Agency on August 14, 1992. Reclamation's Record of Decision (ROD) on the project was signed on November 7, 1992. The FEIS was prepared in conjunction with Douglas County's (County) application for a Small Reclamation Projects Act loan and grants to develop a dam and reservoir at the Milltown Hill site on Elk Creek above Drain, Oregon. To date, the project has not yet been implemented. Reclamation believes that due to the length of time since the ROD was signed, the recent listing of the Umpqua River (UR) cutthroat trout as an endangered species, and the subsequent jeopardy opinion received from the National Marine Fisheries Service (NMFS) relative to the project's potential effects on the UR cutthroat trout, it is appropriate to reexamine the potential effects of the project to determine if there is any significant new information that bears on the proposed action or its corresponding environmental effects. This would encompass an evaluation of any new information gathered and derived from: the Endangered Species Act (ESA) consultation process, the Clean Water Act permitting process, and public and agency comments. The proposed action and the no action alternative will be evaluated in the supplement to the FEIS.

ADDRESSES: Bureau of Reclamation, Pacific Northwest Regional Office, 1150 N Curtis Road, Suite 100, Boise ID 83706–1234.

FOR FURTHER INFORMATION CONTACT: For information on the project contact Robert Hamilton, telephone (208) 378–5087. For information regarding the NEPA process contact Robert Christensen, telephone (208) 378–5039.

SUPPLEMENTARY INFORMATION: The County's loan application was approved by the Commissioner of Reclamation and the Secretary of the Interior on May 17, 1994, and May 18, 1994, respectively. Congress subsequently approved the project and included implementation funding in Reclamation's 1996 and 1997 budgets. These funds cannot be used until a loan repayment/grant contract between the County and Reclamation has been signed.

The major feature of the project is a 186-foot high roller-compacted concrete dam, which would create a 24,143-acre-foot reservoir on Elk Creek, a tributary of the North Umpqua River. The project dam, reservoir, and associated facilities would provide regulated flows of water to improve anadromous and resident fisheries; improve water quality in Elk and Yoncalla Creeks; provide untreated water to the communities of Rice Hill, Yoncalla, and Drain, allowing for municipal expansion and industrial diversification; provide supplemental or full irrigation service for up to 4,661 acres of arable lands; and provide new water-related recreational opportunities. The project would also provide limited flood control in and near the city of Drain and would provide drainage facilities on project agricultural lands as needed.

On September 9, 1996, the UR cutthroat trout was listed as endangered. On October 23, 1996, Reclamation and the County submitted a biological assessment (BA) to NMFS analyzing the effects of the proposed project on the listed and proposed species. On December 18, 1997, NMFS issued its biological opinion under Section 7 of the ESA, stating that the proposed project is likely to jeopardize the continued existence of UR cutthroat trout and result in adverse modification of proposed critical habitat. A reasonable and prudent alternative was identified by NMFS to minimize the take of UR cutthroat trout.

On February 28, 1997, Reclamation sent a letter to over 120 individuals and organizations and issued a news release regarding the proposed Milltown Hill Project located in Douglas County, Oregon. The letter and news release provided a public update on the project and requested the public's help in identifying any new information or issues that should be considered in reevaluating the environmental effects of the proposed project. Reclamation received 36 letters of comment—2 from Federal and state agencies, 3 from city and local agencies, 5 from private organizations, and 26 from private individuals. Issues and comments provided in these letters, along with issues raised in consultation and permitting processes, have been summarized in a scoping document and will guide the analysis presented in the supplemental FEIS. The scoping document will be made available to all interested parties. Reclamation also welcomes additional written comments or any other new issues related to the environmental effects of the proposed project. A draft supplemental FEIS will be made available for public review and comment in early 1998.

Dated: December 22, 1997.

John W. Keys, III,

Regional Director, Pacific Northwest Region.

[FR Doc. 97–33847 Filed 12–29–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council's Ecosystem Roundtable Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council's (BDAC) Ecosystem Roundtable will meet to discuss several issues including: additional proposals, directed programs, and focused grants for FY 98 funding, revised planning process, funding coordination, and other issues. This meeting is open to the public. Interested persons may make oral statements to the Ecosystem Roundtable or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council's Ecosystem Roundtable meeting will be held from 9:30 a.m. to 12:30 p.m. on Tuesday, January 13, 1998.

ADDRESSES: The Ecosystem Roundtable will meet in Room 1131, Resources Building, 1416 Ninth Street, Sacramento, CA.

CONTACT PERSON FOR MORE INFORMATION: Cindy Darling, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as the Bay-Delta Advisory Council (BDAC) to advise CALFED on the program mission, problems to be addressed, the objectives for the Program. The BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. The BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the CALFED Bay-Delta Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: December 19, 1997.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 97–33849 Filed 12–29–97; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Renew Collections; Comment Request

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information is necessary for the proper performance of the functions of the agency, including whether information shall have practical utility; (b) the accuracy of the 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.

DATES: Send comments on or before January 31, 1998.

ADDRESS INFORMATION TO: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Washington, D.C. 20746, 202–712–1365 or via e-mail bjohnson@usaid.gov.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0542.

Form Number: AID 1558–2.

Title: Request for Advance or Reimbursement.

Type of Submission: Renew.

Purpose: The purpose of this information collection is to assure that American Schools and Hospitals Abroad (ASHA) grant recipients are permitted to obtain advances or reimbursements for expenditures that are authorized by the grant agreement. The information is used by (a) ASHA to monitor grant implementation relative to financial matters, (b) the Office of Financial Management (FM) to track disbursements and expenditures, and, (c) the Department of Treasury to effect payments.

Annual Reporting Burden:

Respondents: 70

Total annual responses: 400

Total annual hours requested: 17,698

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0543.

Form Number: AID 1558–1 and AID 1558–1A.

Title: Financial Status Report and Worksheet.

Type of Submission: Renew.

Purpose: The purpose of this information collection is to assure that ASHA grant recipients are accountable for expenditures incurred under the grant agreement for only those items authorized by the agreement. The information is used by ASHA to monitor the expenditures under each authorized line item and calculate the monetary gain or loss realized during the life of the grant.

Annual Reporting Burden:

Respondents: 70

Total annual responses: 400

Total annual hours requested: 280

Dated: December 15, 1997.

Willette L. Smith,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management

[FR Doc. 97–33816 Filed 12–29–97; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Office of the Attorney General, Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of new proposed information collection under review; Survey of State Juvenile Record Keeping and Drug Testing Procedure.

The Office of the Attorney General, U.S. Department of Justice, has submitted the following new information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with sections 1320.13 (a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The Office of the Attorney General has determined that it cannot comply with the normal clearance procedures under this Part because normal clearance procedures are reasonably likely to prevent the timely collection of information to meet a Congressional request. This information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this information collection is requested from OMB by January 5, 1998. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Victoria Wassmer, 202–395–5871, Department of Justice Desk Officer, Washington, DC 20530.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. We are requesting written comments and suggestions from the public and affected agencies concerning this collection of information. Comments are encouraged and will be accepted until March 2, 1998. Your

comments should address one or more of the following four points:

1. Evaluate whether the 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 agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

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, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to E. Kinney Zalesne, 202–514–2927, Office of the Attorney General, Washington, DC, 20530. If you have additional comments, suggestions, or need a copy of the information collection instrument with instructions, or additional information, please contact E. Kinney Zalesne. Additionally, comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530. Additional comments may be submitted to DOJ via facsimile at 202–514–1590.

Overview of this information collection:

1. *Type of Information Collection:* New collection.

2. *Title of the Form/Collection:* Survey of State Juvenile Record Keeping and Drug Testing Procedures.

3. *Agency form number:* None; Applicable component of the Department of Justice sponsoring the collection: Office of the Attorney General, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, local or tribal government. Other: None. Abstract: This survey will collect specific information on the legal, regulatory and practical framework in place in the States at this time. The results from this survey will inform both the Department of Justice and the U.S. Congress in considering specific re-authorization proposals for the Office of Juvenile Justice and Delinquency Prevention.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 204 respondents at 20–30 minutes per respondent.

6. *An estimate of the total public burden (in hours) associated with the collection:* 76.5 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: December 22, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–33842 Filed 12–29–97; 8:45 am]

BILLING CODE 4410–19–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Stipulation and Order Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

In accordance with Departmental policy, 28 CFR 50.7, and with Section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that a Stipulation And Order in *United States* v. *Action Manufacturing, Inc.*, No. 96–6844 (E.D. Pa.), was lodged on December 15, 1997, with the United States District Court for the Eastern District of Pennsylvania.

The Stipulation And Order resolves the claims of the United States pursuant to Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606, 9607(a), in connection with remedial action taken by the United States at the Action Manufacturing Company, Inc. site in Atglen, Chester County, Pennsylvania. Defendant Action Manufacturing Inc. is the current owner and operator of the Atglen Site. The United States seeks to recover removal costs incurred by the United States Environmental Protection Agency, and also seeks permanent injunctive relief for alleged violations by Defendant of CERCLA 107(a), 42 U.S.C. 9607(a).

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Stipulation And Order. 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. *Action Manufacturing, Inc.*, DJ #90–7–1–757A (E.D. Pa.). Comments may also be addressed to Benjamin D. Fields, Mail Code 3RC32, U.S. Environmental Protection Agency, 841 Chestnut Building, Philadelphia, PA 19107.

The Stipulation And Order may be examined and copied at the Office of the Clerk, U.S. District Court for the Eastern District of Pennsylvania; or at the Region III Office of the Environmental Protection Agency, c/o Benjamin D. Fields, 841 Chestnut Street, Philadelphia, PA. A copy of the Stipulation And Order may also be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.25 (25 cents per page reproduction cost), payable to the Consent Decree Library.

Walker Smith,

Deputy Chief, Environmental Enforcement Section.

[FR Doc. 97–33809 Filed 12–29–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq., in United States v. Alfa–Laval, Inc., et al.

In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), as amended, 42 U.S.C. 122(i), and Department policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed Consent Decree in *United States* v. *Alfa-Laval, Inc., et. al.*, Civil Action No. 97–8670, was lodged in the United States District Court for the Southern District of New York on November 21, 1997. The proposed consent decree, if entered, will resolve the liability of Alfa-Laval, Inc. and Theodore S. Losee, Sr., (collectively, ''Defendants''), under Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), in connection with alleged releases of hazardous substances at the Jones Sanitation Superfund Site (''Site''), a 57-acre parcel located near the intersection of Crum Elbow Road and Cardinal Road in Hyde Park, Dutchess County, New York. Under the settlement reflected in the proposed consent decree, Alfa-Laval, Inc. will perform remedial design/remedial action work at the Site implementing the Record of Decision issued March 31, 1997 and pay response costs of up to $535,000 to the United States. Theodore Losee will provide access and

institutional controls in connection with the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of publication of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to Lois J. Schiffer, Assistant Attorney General of the Environment and Natural Resources Division, United States Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Alfa-Laval, Inc., et al.,* Department of Justice No. 90–11–3–1221.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Southern District of New York, 100 Church Street, 19th Floor, New York, New York 10007; at Region I office of the United States Environmental Protection Agency, 290 Broadway, New York, New York 10007; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, 202–624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, at the above address. In requesting a copy, please enclose a check in the amount of $24.24 (25 cents per page reproduction costs) payable to Consent Decree Library.

Walker B. Smith,

Deputy Chief, Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. 97–33826 Filed 12–29–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

In accordance with Department of Justice policy, 28 CFR § 50.7, notice is hereby given that a proposed consent decree in the action entitled *United States of America* v. *James Bartlett, Joanne Bartlett, Bartlett Disposal Service, Inc., and Bartlett Disposal Service Company,* Civil Action No. 97–CV–1800 (TJM/GLS) (N.D.N.Y.), was lodged on December 10, 1997 with the United States District Court for the Northern District of New York. The proposed consent decree resolves claims asserted by the United States, on behalf of the U.S. Environmental Protection Agency, against the defendants under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601–9675. These claims are for recovery of response costs incurred by the United States in connection with the Sidney Landfill Superfund Site (''Site''), located in Delaware County, New York.

Under the terms of the proposed consent decree, the defendants will pay $99,309 to the United States in reimbursement of response costs incurred by the United States with respect to the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *James Bartlett, Joanne Bartlett, Bartlett Disposal Service, Inc., and Bartlett Disposal Service Company,* Civil Action No. 97–CV–1800 (TJM/GLS) (N.D.N.Y.), DOJ Ref. No. 90–11–2–1128D.

The proposed consent decree may be examined at the Office of the United States Attorney, 445 Broadway, Room 231, Albany, New York 12207; the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866; and the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, DC 20005, telephone (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $7.25 (25 cents per page reproduction costs) made payable to Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–33825 Filed 12–29–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant To Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(d)(2), notice is hereby given that on December 16, 1997, a proposed Consent Decree IN *United States* v. *Chrysler Corporation, et al.,* Civil Action No. 97–76097, was lodged with the United States District Court for the Eastern District of Michigan. The proposed Consent Decree resolves claims under Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability act (''CERCLA''), 42 U.S.C. 9606 and 9607(a), for implementation of response actions and recovery of response costs relating to the Willow Drum Site (the ''Site''), located at 42855 Willow Road, Sumpter Township, Wayne County, Michigan.

Under the proposed Consent Decree, Chrysler agrees to complete a clean up at the Site consistent with an Engineering Evaluation/Cost Analysis (''EE/CA'') at an estimated cost of $700,000. The response action in the EE/CA includes the dewatering, excavation and off-site disposal of contaminated soils, to be followed by soil and groundwater verification sampling to ensure that residential standards are achieved. Chrysler and GM also agree to pay $250,000 of EPA's $1.4 million in past costs and pay any future costs that EPA incurs.

The Department of Justice will receive comments concerning the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C., 20044, and should refer to *United States* v. *Chrysler Corporation, et al.,* DOJ Number 90–11–2–1087A. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of the resource Conservation and Recovery Act, 42 U.S.C. 6973(d).

The proposed Consent Decree may be examined at any of the following offices: (1) The Office of the United States Attorney, Eastern District of Michigan, Eastern District of Michigan, 211 West Fort Street, Suite 2001, Detroit, MI 48226 (313) 226–9770 (2) the U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Blvd. Chicago, Illinois 60604, (312) 353–886–6842; and (3) the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. copies of the proposed Decree may be obtained by mail from the Consent Decree Library, 1120 G street, N.W., 4th Floor, Washington, D.C. 20005, For a copy of the Consent Decree (without attachments), please enclose a check for $14.50 ($.25 per page reproduction

charge) payable to ''Consent Decree Library.''

Bruce S. Gelber,

Deputy Chief Environmental Enforcement Section Environment & Natural Resources Division.

[FR Doc. 97–33822 Filed 12–29–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act (''CERCLA'')

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that a proposed consent decree in *United States* v. *Jane Doe, as Executrix of the Estate of Edmund Barbera, et al.,* 96 Civ. 8563 (BSJ), was lodged on November 16, 1997, with the United States District Court for the Southern District of New York. The Consent Decree addresses the hazardous waste contamination at the Port Refinery Superfund Site (the ''Site''), located in the Village of Rye Brook, Westchester County, New York. The Consent Decree requires two *de minimis* generators of hazardous substances transported to the Site to pay to the United States a total of $42,448.00.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Jane Doe, as Executrix of the Estate of Edmund Barbera, et al.,* DOJ Ref. #90–11–3–1142A.

The proposed consent decree may be examined at the office of the United States Attorney for the Southern District of New York, 100 Church Street, New York, New York, 10007 (contact Assistant United States Attorney Kathy S. Marks); the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York, 10007–1866 (contact Assistant Regional Counsel Michael Mintzer); and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may 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 $5.50 (25 cents per page reproduction costs) for the Consent Decree, payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–33824 Filed 12–29–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Pursuant To The Safe Drinking Water Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on December 4, 1997, a proposed Consent Decree in *United States* v. *Gas Transportation Corporation,* (N.D.FLA.) (Civil No. 3:97CV519/LAC), was lodged with the U.S. District Court for the Northern District of Florida. The United States filed its complaint in this action simultaneously with the consent decree, on behalf of the Environmental Protection Agency (''EPA'') pursuant to provisions of the Safe Drinking Act (''SDWA''), 42 U.S.C. 300h–2(b), and its implementing regulations at 40 CFR part 144. The complaint seeks injunctive relief and civil penalties for violations of the SDWA. Gas Transportation Corporation (''GTC'') owned and operated the ''Finley Heirs'' well, a Type II injection well located in Santa Rosa County, Florida, for the disposal of saltwater brine generated as an incident of its oil production. The United States has alleged that GTC's improper operation of the injection well allowed for the movement of contaminants into an underground source of drinking water in violation of the Underground Injection Control (''UIC'') regulations, its UIC permit and a previously issued Administration Order on Consent (''AOC''). Under the proposed settlement, GTC will pay $113,700 in civil penalties based on its limited financial ability, in resolution of the United States' claims as set forth in the complaint.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Gas Transportation Corporation,* D.J. ref. 90–5–1–1–4388.

The proposed consent decree may be examined at the Office of the United States Attorney for the Northern District of Florida, 114 East Gregory Street, Pensacola, Florida 32501 and at the Consent Decree Library, 1120 G. Street, N.W., 4th Floor, Washington, D.C. 20005. A copy of the proposed decree may be obtained in person or by mail from the Consent Decree Library, 1120 G. Street, N.W., Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $3.25 ($.025 per page for reproduction costs) payable to: Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section Environment & Natural Resources Division.

[FR Doc. 97–33823 Filed 12–29–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Section 122(d) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9622(d), and the policy of the United States Department of Justice, as provided in 28 CFR 50.7, notice is hereby given that on December 9, 1997, three proposed Consent Decrees in *United States* v. *Estate of J.M. Taylor, et al.,* Civ. No. C–89–231–R, were lodged with the United States District Court for the Middle District of North Carolina. These Consent Decrees concern the Aberdeen Pesticides Dumps Superfund Site in Aberdeen, North Carolina. The Site is comprised of five non-contiguous Areas: the Farm Chemicals, Twin Sites, Fairway Six, Route 211 and McIver Dump Areas. Pesticides were formulated at the Farm Chemicals Area from the late 1930's until 1987. The Twin Sties and Fairway Six Areas were disposal locations for pesticide wastes from the formulation plant on the Farm Chemicals Area. Pesticide wastes from another pesticide formulation plant in Aberdeen were disposed of at the Twin Sites, Fairway Six, Route 211 and McIver Dump Areas.

Under the first of the three Consent Decrees, nine corporate defendants (Bayer Corp.; Dupont; Grower Service Corp.; Kaiser Aluminum & Chemical Corp.; Mobil Oil Corp.; Novartis Crop Protection (formerly Ciba-Geigy); Olin Corp. Shell Oil Co.; and in Aberdeen were disposed of at the Twin Sites, Fairway Six, Route 211 and McIver Dump Areas.

Under the first of the three Consent Decrees, nine corporate defendants (Bayer Corp.; Dupont; Grower Service Corp.; Kaiser Aluminum & Chemical Corp.; Mobil Oil Corp.; Novartis Crop Protection (formerly Ciba-Geigy); Olin Corp. Shell Oil Co.; and Union Carbide Corp.) agree to implement the remedial design and remedial action for EPA's selected remedies for contaminated soil and groundwater at all five Areas comprising the Site and to pay $8,568,686.01 of the United States' past response costs, plus future oversight costs. This decree is referred to as the ''RD/RA Decree.''

Under the second Consent Decree, Yadco of Pinehurst will pay $125,000 in partial reimbursement of the United States' response costs. This second Decree is referred to as the ''Yadco Decree.''

Under the third Consent Decree, Dan Maples, Partners in the Pits; Pits Management Corp. and Maples Golf Construction will collectively pay $600,000 in partial reimbursement of the United States' response costs. This third Decree is referred to as the ''Maples Decree.''

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments concerning the proposed Consent Decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, D.C., 20044, and should refer to *United States* v. *Estate of J.M. Taylor, et al.,* D.J. Ref. 90–11–3–323.

The proposed Consent Decrees may be examined at any of the following offices: (1) The Office of the United States Attorney for the Middle District of North Carolina, 101 South Edgeworth, Greensboro, North Carolina; (2) the U.S. Environmental Protection Agency, Region 4, 100 Alabama Street, S.W., Atlanta, Georgia; and (3) the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (telephone (202) 624–0892).

A copy of the proposed Consent Decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. Please refer to the reference case and identify the particular decrees desired. There is a photocopying charge of $0.25 per page. All checks should be made payable to ''Consent Decree Library.''

For a copy of the RD/RA Consent Decree with all attachments, please enclose a check for $136.00. For a copy of the RD/RA Decree without the attachments, enclose a check for $43.25.

For a copy of the Yadco Consent Decree, please enclose a check for $6.75. For a copy of the Maples Consent Decree enclose a check for $8.75. There are no attachments to the Yadco or Maples Consent Decrees.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 97–33821 Filed 12–29–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil Action No. 497–CF 564 E]

Public Comment and Response on Proposed Final Judgment; United States and State of Texas v. Allied Waste Industries, Inc.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h), the United States of America hereby publishes below the comment received on the proposed Final Judgment in *United States and State of Texas* v. *Allied Waste Industries, Inc.,* Civil Action No. 497–CV 564 E, filed in the United States District Court for the Northern District of Texas, together with the United States' response to the comment.

Copies of the comment and response are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Washington, DC 20530, telephone: (202) 514–2481, and at the office of the Clerk of the United States District Court for the Northern District of Texas, Room 310, 501 W. 10th Street, Fort Worth, TX 76102. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

Independent Environmental Services, Inc.,
October 10, 1997.
J. Robert Kramer II
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
1401 H Street, N.W., Suite 3000
Washington, DC 20530

Dear Mr. Kramer: This letter addresses our company's concerns regarding the merger or takeover of USA Waste Services, Inc., Fort Worth by Allied Waste Industries, Inc., Fort Worth. Our company, Independent Environmental Services, Inc. (IESI), is an independent hauler located and doing business in Tarrant County. To my knowledge, we are the only independent hauler in the municipal residential business in Tarrant County and one of a very few competing in the commercial and industrial business in Tarrant County. As I am sure you are aware, Allied Waste Industries controls all of the assets that were owned by USA Waste Services, Triple A Waste Services, Consolidated Waste Services, Laidlaw Waste Industries, Sanifill, and Tarrant County Waste. This combination has reduced competition in our market and has resulted in higher landfill disposal fees to independent competitors like IESI. As you are no doubt aware, the large public solid waste companies often seek to control their markets and eliminate competition by charging excessive disposal rates to independent operators like IESI.

IESI received a letter from Laidlaw advising us of the opportunity to purchase air space at their newly acquired Crow Landfill as well as additional space at their existing Turkey Creek Landfill. We submitted a proposal to buy air space at the Crow Landfill. My concern is that I also received a letter and phone call from Allied/Laidlaw, which raises our cost of disposal 23% for residential and compacted industrial waste. I have also been advised that my front load commercial disposal rates have been increased 63.4%.

When David Bickel from the US Justice Department interviewed me, I expressed a concern that only Waste Management and Sanifill/USA Waste owned landfills that were strategically and economically located for disposal in Tarrant County. It is also interesting to point out that, prior to the Allied acquisition, Sanifill was not a competitor in the hauling business and was very competitive and accommodating and desirous of our disposal business. These recent price increases by Allied/Laidlaw represent a strategic plan to leverage this capacity and utilize it against us, particularly, since our disposal alternatives are extremely limited.

Allied/Laidlaw has seen fit to measure our front loader trucks differently than the truck manufacturer and the 2 previous landfill owners. I cannot help but think the term ''anti-competitive, monopolistic, unfair practices, price gouging, and driving the little guy out of business'' all aptly describe the action taken by Allied/Laidlaw. It is also rumored that BFI would be purchasing the air space at Crow. The rumor is supported by the fact that Allied/Laidlaw needs disposal capacity in another market where BFI can accommodate their needs. From an accounting perspective, you can imagine the ''pencil whipping'' that can take place in that type of an arrangement. A deal could easily be structured or better yet, two deals easily structured in which anyone reviewing the merits would have no idea of the actual accommodations that have taken place. It also further enhances my belief of the desire by the Laidlaw management to drive us out of business.

I'm sure that your decision to approve (subject to conditions) the Allied acquisition did not contemplate the current activities demonstrated by Allied/Laidlaw. If your final judgment is not yet final, we would like to discuss our concerns so that our company may continue to survive.

Your immediate concern to this problem is appreciated.

Respectfully yours,

Charles ''Mickey'' Flood,

President and CEO.

U.S. Department of Justice,
Antitrust Division, 1401 H Street, City Center Building, Washington, DC 20530,
December 8, 1997.

Mr. Charles ''Mickey'' Flood
President and CEO
Independent Environmental Services, Inc.
3330 North Beach Street
Haltom City, TX 76111

Re: *United States, et al.,* v. *Allied Waste Industries, Inc., C.A. No. 497–CV 564 E (N.D. TX)*

Dear Mr. Flood: This letter responds to your letter dated October 10, 1997 commenting on the proposed Final Judgment in the above-captioned civil antitrust case challenging the acquisition by Allied Waste Industries, Inc. (''Allied'') of the Crow Landfill in Tarrant County, Texas owned by USA Waste Services, Inc. The Complaint alleges that the acquisition violates Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, because it is substantially likely to lessen competition for the disposal of municipal solid waste (''MSW'') generated in Tarrant County. Under the proposed Final Judgment Allied is required to divest 880,000 cubic yards of disposal space at the Crow Landfill to a purchaser(s) who would have the right to use this airspace for five years or the life of the Crow Landfill, whichever is longer. Allied is also required to divest 560,000 cubic yards of disposal space at the Turkey Creek Landfill to a purchaser(s) who would have the right to use the airspace for a ten-year period.

In your letter you expressed concern that since acquiring the Crow Landfill Allied has increased disposal rates and changed the way trucks are measured that dispose of waste. You indicated in a telephone conversation with the staff that when USA Waste owned the Crow Landfill that the front-load hopper on the truck was not measured for waste being deposited. Your letter indicates that your disposal rates increased by 23% and the change in the method of measuring trucks has resulted in a total 63.4% increase to IESI. Additionally, your letter states that before the acquisition, USA Waste was not a competitor in the hauling business and therefore the Crow Landfill was desirous of IESI's disposal business. As Allied is also in the hauling business, you believe the acquisition represents a plan to raise prices for disposal which will place IESI at a disadvantage in competing with Allied for hauling business since there are few disposal alternatives to IESI. Your letter indicates that large waste companies seek to control markets by charging ''excessive'' disposal rates to independent haulers, and you believe BFI, a large waste company, will be sold the airspace in return for assets by Allied in another location.

We have looked into the concerns expressed in your letter. We can report that Allied has increased the rates at the Crow Landfill (now called Mill Valley) and claims that the increase is necessary because of capital costs for the upkeep and maintenance of the landfill. We understand the rates at the Crow Landfill are now $6 for compacted MSW and $4.70 for loose MSW. Our investigation has revealed that these prices are set at levels which are generally comparable to prices charged at other landfills in the Tarrant County area. With regard to the measuring of trucks, it is our understanding that the other landfill operated by Allied specified in the Complaint, Turkey Creek, and the landfills in the Tarrant County area not owned by Allied all measure trucks in the same fashion as now used by Allied at Mill Valley.

Although the price increases instituted by Allied do not appear out of line with prevailing prices in the Tarrant County area, the increase reinforces the belief of the United States that a Final Judgment requiring Allied to sell airspace at the Crow Landfill (now Mill Valley) and the Turkey Creek Landfill is necessary to protect competition both in landfills and hauling in the Tarrant County area. Divestiture will allow one or more purchasers to obtain airspace rights that they can use to compete directly for local solid waste contracts or to resell to other local haulers. As you know, Allied has started the process of obtaining bids for airspace rights. As we understand the bidding process so far, the prices being offered for the airspace are at levels which could allow the winning bidder(s) to resell space at prices below those being currently charged by Allied. Your company has an opportunity to bid on that airspace and we understand it has done so.

Your letter also expresses a concern that BFI, a large national waste company, is bidding for and may win the airspace rights. Should BFI be a bidder in the process or become the winning bidder, this development would not necessarily constitute an anticompetitive effect of the merger. The antitrust laws are not designed to promote the interests of any one competitor but to protect competition as a whole. We will, however, examine any proposed sale to ensure that it complies with the terms of the Final Judgment.

The Antitrust Division appreciates you bringing your concerns to our attention and hopes this response will alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, a copy of your letter and this response will be published in the **Federal Register** and filed with the Court. Thank you for your interest in the enforcement of the antitrust laws.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

[FR Doc. 97–33810 Filed 12–29–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Tom Paige Catering, Inc. and Valley Foods Inc., Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Northern District of Ohio in *United States* v. *Tom Paige Catering, Inc. and Valley Foods Inc.,* Civil Action No. 1:97CV3268.

The Complaint in this case alleges that the defendants formed a joint venture in order to lessen and eliminate competition for food service contracts with the Cleveland, Ohio, Head Start program, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

The proposed Final Judgment orders the defendants to dissolve their joint venture and enjoins them from (A) agreeing with any other food service contractor to fix prices on food service contracts; (B) participating in future discussions or communications about the prices they quote on food service contracts; (C) agreeing with other food service contractors on the customers or territories they bid for or serve; (D) entering into any agreement with any non-defendant food service contractor before notifying the plaintiff. Each defendant is also required to appoint an antitrust compliance officer and establish an antitrust compliance program with specified requirements. Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to William J. Oberdick, Acting Chief, Great Lakes Field Office, Antitrust Division, Department of Justice, Plaza 9 Building, 55 Erieview Plaza, Suite 700, Cleveland OH 44114 (*Telephone:* 216/522–4074).

Rebecca P. Dick,

Director, Civil Non-Merger Enforcement.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

(1) The parties consent that a final judgment in the form hereto attached may be filed and entered by the Court at any time after the expiration of the sixty (60) day period for public comment provided by the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), without further notice to any party or other proceedings, either upon the motion of any party or upon the Court's own motion, provided that plaintiff has not withdrawn its consent as provided herein;

(2) The plaintiff may withdraw its consent hereto at any time within said period of sixty (60) days by serving notice thereof upon the other party

hereto and filing said notice with the Court;

(3) In the event the plaintiff withdraws its consent hereto, this stipulation shall be of no effect whatever in this or any other proceeding and the making of this stipulation shall not in any manner prejudice any consenting party to any subsequent proceedings.

Dated:

Respectfully submitted,

For the Plaintiff:

Joel I. Klein,

Assistant Attorney General.

A. Douglas Melamed,

Principal Deputy Assistant Attorney General.

Rebecca P. Dick,

Deputy Director of Operations.

Donald M. Lyon, *(19207–WA).*

William J. Oberdick, *(2235703–NY)*

Acting Chief, Great Lakes Office.

Attorneys, Antitrust Division, U.S. Department of Justice, Great Lakes Office, 55 Erieview Plaza, Suite 700, Cleveland, Ohio 44114, Telephone: (216) 522–4080.

For the Defendants:

Jerome Emoff, *Esq.*

Tom Paige Catering Co., Inc.

Dennis Haines, *Esq.,*

Valley Foods, Inc.

Final Judgment

Plaintiff, the United States of America, filed its complaint on December 16, 1997. Plaintiff and defendants have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence against or an admission by any party to any issue of fact or law. Defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court.

Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties, it is hereby *ordered, adjudged, and decreed* as follows:

I. Jurisdiction

This Court has jurisdiction of the subject matter of this action and of the parties consenting hereto. The complaint states a claim upon which relief may be granted against defendants under Section 1 of the Sherman Act (15 U.S.C. § 1).

II. Definitions

As used in this Final Judgment:

A. ''Bid'' means an offer, proposal, or quotation, formal or informal, oral or written, to a potential buyer or its agent.

B. ''Food service contract'' means any agreement to provide meals to a customer for a period of time, but is not intended to include contracts for the routine purchase of ordinary supplies by the defendants.

C. ''Food service contractor'' means anyone engaged in the business of soliciting and performing food service contracts.

D. ''Person'' means any natural person; public or private corporation, whether or not organized for profit; governmental entity; partnership; association; cooperative; sole proprietorship; or other business or legal entity.

III. Applicability

A. This Final Judgment applies to defendants and to each of their officers, directors, agents, employees, subsidiaries, successors, and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Each defendant shall require, as a condition of the sale or other disposition of all or substantially all of its assets or stock, that any acquiring party agrees to be bound by the provisions of this Final Judgment and that such agreement be filed with the Court.

IV. Dissolution of Joint Venture

The defendants are hereby ordered and directed to dissolve the joint venture formed by them on April 1, 1994, within seventy five (75) days of the entry of this Final Judgment, and are enjoined and restrained from entering into future joint ventures together for the purpose of bidding on food service contracts.

V. Other Prohibited Conduct

A. Each defendant is hereby enjoined and restrained from agreeing with any other food service contractor to fix, establish, raise, stabilize or maintain prices quoted on food service contracts.

B. Each defendant is further enjoined and restrained from participating in any future discussion with or in the future communicating with any other food service contractor concerning prices quoted on food service contracts.

C. Each defendant is further enjoined and restrained from agreeing with any other food service contractor on customers or territories to be bid for or served.

D. Each defendant is further enjoined and restrained from entering into any agreement with any non-defendant food service contractor regarding food service contracts before notifying the plaintiff.

VI. Compliance Program

Each defendant is ordered to establish and maintain an antitrust compliance program that shall include designating, within thirty (30) days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for implementing the antitrust compliance program and achieving full compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, be responsible for the following:

A. Furnishing a copy of this Final Judgment within thirty (30) days of entry of the Final Judgment to each of defendant's officers and directors and each of its employees, salespersons, sales representatives, or agents whose duties include supervisory or direct responsibility for determining the bid prices submitted on food service contracts except for employees whose functions are purely clerical;

B. Distributing in a timely manner a copy of this Final Judgment to any owner, officer, employee or agent who succeeds to a position described in Section VI(A);

C. Providing each person designated in Sections VI(A) or (B) with a written explanation in plain language of this Final Judgment, with examples of conduct prohibited by the Final Judgment, and with instructions that each person designated in Section VI(A) and (B) shall report any known violation of the Final Judgment to the Antitrust Compliance Officer;

D. Arranging for an annual oral briefing to each person designated in Sections VI (A) or (B) on the meaning and requirements of this Final Judgment and the antitrust laws, including the advice that such defendant will make legal advice available to such person regarding any compliance questions or problems, accompanied by a written explanation of the type described in Section VI(C);

E. Obtaining from each person designated in Sections VI(A) or (B) certification that he or she:

(1) has read, understands and agrees to abide by the terms of this Final Judgment;

(2) has been advised of and understands defendant's policy with respect to compliance with the Sherman Act and the Final Judgment;

(3) has been advised and understands that his or her non-compliance with the Final Judgment may result in conviction for criminal contempt of court and imprisonment, a fine, or both; and

(4) is not aware of any violation of the Final Judgment that has not been reported to the Antitrust Compliance Officer.

F. Maintaining (1) a record of all certifications received pursuant to Section VI(E); (2) a file of all documents related to any alleged violation of this Final Judgment; and (3) a record of all communications related to any such violation, that shall identify the date and place of the communication, the person involved, the subject matter of the communication, and the results of any related investigation.

VII. Certification

A. Within seventy five (75) days of the entry of this Final Judgment, each defendant shall certify to plaintiff whether such defendant has (1) designated an Antitrust Compliance Officer; (2) has distributed the Final Judgment in accordance with Section VI(A) and (B) above; and (3) has provided the explanation and instructions in accordance Section VI above.

B. For ten years after the entry of this Final Judgment, on or before its anniversary date, each defendant shall file with the plaintiff an annual statement as to the fact and manner of its compliance with the provisions of Section V and VI.

C. If a defendant's Antitrust Compliance Officer learns of any violation of any of the terms and conditions contained in this Final Judgment, defendant shall immediately notify the plaintiff and forthwith take appropriate action to terminate or modify the activity so as to comply with this Final Judgment.

VIII. Inspection and Compliance

A. For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of plaintiff, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant, shall be permitted, subject to any legally recognized privilege:

1. Access during that defendant's office hours to inspect and copy all records and documents in the possession or under the control of that defendant, which may have counsel present, relating to any matters contained in this Final Judgment; and

2. To interview that defendant's officers, employees, and agents, who may have counsel present, regarding any such matters. The interviews shall be subject to defendant's reasonable convenience.

B. Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to a defendant at its principal office, defendant shall submit such written reports, under other if requested, with respect to any of the matters contained in this Final Judgment as may be requested, subject to any legally recognized privilege.

C. No information or documents obtained by the means provided in this Section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by a defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) days' notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding), so that defendant shall have an opportunity to apply to this Court for protection pursuant to Rule 26(c)(7) of the Federal Rules of Civil Procedure.

E. Nothing set forth in this Final Judgment shall prevent the Antitrust Division from utilizing other investigative alternatives, such as Civil Investigative Demand process provided by 15 U.S.C. 1311–1314 or a federal grand jury, to determine if a defendant has complied with this Final Judgment.

IX. Ten-Year Expiration

This Final Judgment will expire on the tenth anniversary of its date of entry.

X. Construction, Enforcement, Modification and Compliance

Jurisdiction is retained by the Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of its provisions, for its enforcement or compliance, and for the punishment of any violation of its provisions.

XI. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____.

United States District Judge.

Competitive Impact Statement

Pursuant to Section 2 of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b), the United States files this Competitive Impact Statement relating to the proposed final judgment in *United States* v. *Tom Paige Catering Co. and Valley Foods, Inc.*, submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceedings

On December 16, 1997 the United States filed a civil antitrust complaint under Section 4 of the Sherman Act, as amended, 15 U.S.C. 4, alleging that the above-named defendants combined and conspired to lessen and eliminate competition on food service contracts with the Cleveland, Ohio, Head Start program, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

The complaint seeks a judgment by the Court declaring that the defendants engaged in an unlawful combination in restraint of trade in violation of the Sherman Act. It also seeks an order by the Court to enjoin the defendants from any such activities or other activities having a similar purpose or effect in the future.

The United States and defendants have stipulated that the proposed final judgment may be entered after compliance with the APPA, unless the United States withdraws its consent.

The Court's entry of the proposed final judgment will terminate this civil action against these defendants, except that the Court will retain jurisdiction over the matter for possible further proceedings to construe, modify or enforce the judgment, or to punish violations of any of its provisions.

II. Description of the Practices Giving Rise to the Alleged Violations of the Antitrust Laws

Tom Paige Catering (''Paige'') is an Ohio corporation doing business in greater Cleveland, Ohio. Valley Foods, Inc. (''Valley'') is a Ohio corporation with its principal place of business in Youngstown, Ohio. Both Paige and Valley have been engaged in the business of preparing and serving meals on a contract basis.

Since at least 1991, Paige and Valley have bid on contracts for meals to children enrolled in the Cleveland Head Start program. Head Start is a program which provides comprehensive developmental services for low-income, pre-school children, ages three to five, and social services for their families.

The meals for the children enrolled in the program are funded entirely by the federal government through the United States Department of Agriculture. The funds are administered by the State of Ohio's Department of Education and managed, locally, by sponsoring organizations. The Cleveland Head Start program is sponsored by the Council for Economic Opportunity in Greater Cleveland (''CEOGC''), a not for profit organization. The GEOGC solicits bids on contracts for breakfasts, lunches, and snacks for the Head Start program in accordance with regulations promulgated by the United States Department of Agriculture and the State of Ohio. The annual value of these contracts has ranged in recent years from around $300,000 to over $500,000.

Since at least September 1992, Paige and Valley have been the only bidders on the meal contracts with Head Start. Beginning in September of 1994, Paige and Valley bid as a joint venture. The purpose of their joint venture was to illegally end competition between them. This joint venture suppressed and eliminated competition among the defendants in the provision of food service contracts to Head Start and deprived tax payers of free and open competition in the sale of food contracting services to Head Start. After the joint venture began, the cost of meals to Head Start did in fact increase. By way of example, Valley's winning bid in September 1993 included a bid of $1.01 per meal for cold lunches. In 1994, the joint venture obtained $1.70 per meal for cold lunches. It is likely that at least part of the increase in prices was due to lack of competition between Paige and Valley. Paige and Valley's joint venture is a contract, combination, or conspiracy in restraint of trade in violation of 15 U.S.C. 1.

III. Explanation of the Proposed Final Judgment

The United States and the defendants have stipulated that a final judgment, in the form filed with the Court, may be entered by the Court at any time after compliance with the APPA, 15 U.S.C. 16(b)–(h). The proposed final judgment provides that the entry of the final judgment does not constitute any evidence against or an admission by any party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the APPA, entry of the proposed final judgment is conditioned upon the Court finding that its entry will be in the public interest.

The proposed final judgment contains three principal forms of relief. First, the defendants are ordered to dissolve the joint venture formed by them on April 1, 1994. Second, the defendants are enjoined from engaging in conduct, either among themselves or with other competitors, that could have similar anticompetitive effects. Third, the proposed final judgment places affirmative obligations on the defendants to pursue a compliance program directed toward avoiding a repetition of their anticompetitive behavior.

A. Prohibited Conduct

Section IV of the proposed final judgment orders the dissolution of the defendants' joint venture. Section V broadly enjoins each defendant from agreeing with other food service contractors to fix prices on food service contracts (V(A)); from participating in any future discussions or communications with other food service contractors regarding the prices quoted on food service contracts (V(B); from entering into territorial or customer allocation agreements with other food service contractors (V(C)); and from entering into any agreements regarding food service contracts with any non-defendant without notifying the United States (V(D)).

B. Defendants' Affirmative Obligations

Section VI requires that within thirty (30) days of entry of the final judgment, each defendant adopt an affirmative compliance program directed toward ensuring that its employees comply with the antitrust laws. More specifically, the program must include the designation of an Antitrust Compliance Officer responsible for compliance with the final judgment, and reporting any violations of its terms. It further requires that each defendant furnish a copy of the final judgment, within sixty (60) days of the date of its entry, to each of its officers and directors and each of its employees who is engaged in or has responsibility for or authority over pricing of food service contracts and to certify within seventy-five (75) days that it has distributed those copies and designated an Antitrust Compliance Officer. Copies of the final judgment also must be distributed to anyone who becomes such an officer, director or employee within thirty (30) days of holding that position and to all such individuals annually.

Furthermore, Section IV requires each defendant to brief each officer, director and employee engaged in or having responsibility over pricing of food service contracts as to the defendant's policy regarding compliance with the Sherman Act and with the final judgment, including the advice that his or her violation of the final judgment could result in a conviction for contempt of court and imprisonment or fine and that the defendant will make legal advice available to such persons regarding compliance questions or problems.

Section VII requires each defendant provide annual certification to the plaintiff of the fact and manner of its compliance. Each defendant annually must obtain (and maintain) certifications from the persons designated in Section VI. Each such person must certify that the aforementioned briefing, advice and copy of the final judgment were received and understood and that he or she is not aware of any violation of the final judgment that has not been reported to the Antitrust Compliance officer.

Under Section VIII of the final judgment, the Justice Department will have access, upon reasonable notice, to each defendant's records and personnel in order to determine compliance with the judgment.

D. Scope of the Proposed Judgment

(1) Persons Bound by the Judgment

The proposed judgment expressly provides in Section III that its provisions apply to each of the defendants, to each of its officers, directors, agents and employees, to each of its subsidiaries, successors and assigns, and to all other persons who receive actual notice of the terms of judgment.

In addition, section III of the judgment prohibits each of the defendants from selling or transferring all or substantially all of its stock or assets unless the acquiring party files with the Court its consent to be bound by the provisions of the judgment.

(2) Duration of the Judgment

Section IX provides that the judgment will expire on the tenth anniversary of its entry.

E. Effect of the Proposed Judgment on Competition

The prohibition terms of Section IV and Section V of the judgment are designed to ensure that each defendant will act independently in determining the prices, and terms and conditions at which it will enter into food service contracts, and that there will be no conspiratorial restraints on the competition for food service contracts. The affirmative obligations of Sections VI and VII are designed to insure that each corporate defendant's employees are aware of their obligations under the

decree in order to avoid a repetition of behavior that occurred limiting competition for food service contracts. Compliance with the proposed judgment will prevent joint ventures that illegally restrict competition or foster price collusion and allocation of sales, markets, and customers by the defendants with each other or between them and other food service contractors.

IV. Remedies Available to Potential Private Plaintiffs

After entry of the proposed final judgment, any potential plaintiff who might have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal and equitable remedies which that person may have had if the proposed judgment had not been entered. The proposed judgment may not be used, however, as *prima facie* evidence in litigation, pursuant to Section 5(a) of the Clayton Act, as amended, 15 U.S.C. 16(a).

V. Procedures Available for Modification of the Proposed Final Judgment

The proposed final judgment is subject to a stipulation between the government and the defendants which provides that the government may withdraw its consent to the proposed judgment any time before the Court has found that entry of the proposed judgment is in the public interest. By its terms, the proposed judgment provides for the Court's retention of jurisdiction of this action in order to permit any of the parties to apply to the Court for such orders as may be necessary or appropriate for the modification of the final judgment.

As provided by the APPA (15 U.S.C. 16), any person wishing to comment upon the proposed judgment may, for a sixty-day (60) period subsequent to the publishing of this document in the **Federal Register,** submit written comments to the United States Department of Justice, Antitrust Division, Attention: William J. Oberdick, Acting Chief, Great Lakes Office, Plaza 9 Building; 55 Erieview Plaza, Suite 700; Cleveland, Ohio 44114–1816. Such comments and the government's response to them will be filed with the Court and published in the **Federal Register.** The government will evaluate all such comments to determine whether there is any reason for withdrawal of its consent to the proposed judgment.

VI. Alternative to the Proposed Final Judgment

The alternative to the proposed final judgment considered by the Antitrust Division will a full trial of the issues on the merits and on relief. The Division considers the substantive language of the proposed judgment to be of sufficient scope and effectiveness to make litigation on the issues unnecessary, as the judgment provides appropriate relief against the violations alleged in the complaint.

VII. Determinative Materials and Documents

No materials or documents were considered determinative by the United States in formulating the proposed Final Judgment. Therefore, none are being filed pursuant to the APPA, 15 U.S.C. 16(b).

Respectfully submitted,

Donald M. Lyon (19207–WA)

William J. Oberdick (2235703–NY)

Acting Chief, Great Lakes Office.

Attorneys, Antitrust Division, U.S. Department of Justice, Great Lakes Office, 55 Erieview Plaza, Suite 700, Cleveland, Ohio 44114, Telephone: (216) 552–4080.

[FR Doc. 97–33820 Filed 12–29–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities Extension of a Currently Approved Collection; Comment Request

ACTION: Application for Procurement Quota for Controlled Substances.

The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until March 2, 1998.

We are requesting written comments and suggestions from the public and affected agencies concerning the collection of information. Your comments should address one or more of the following four points:

1. Evaluate whether the 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 agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

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, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Mr. Frank Sapienza, 202–307–7183, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537. If you have additional comments, suggestions, or need a copy of the information collection instrument with instructions, or additional information, please contact Mr. Frank Sapienza.

Additionally, comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530. Additional comments may be submitted to DOJ via facsimile at 202–514–1590.

Overview of this information collection:

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Application for Procurement Quota for Controlled Substances. Agency form number: DEA Form 250; Applicable component of the Department of Justice sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

3. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None.

Title 21, CFR, 1303.12 requires registered dosage form manufacturers who wish to purchase controlled substances in Schedule II to apply on DEA Form 250 for procurement quotas which limit purchase quantities. The information collected is used for establishing quotas and controlling procurement thereof.

4. *An estimate of the total estimated number of respondents and the amount of time estimated for an average respondent to respond:* 531 respondents at 1 response per year at 1 hour per response.

5. *An estimate of the total public burden (in hours) associated with the collection:* 531 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: December 22, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–33841 Filed 12–29–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Welfare-to-Work Competitive Grants

AGENCY: Employment and Training Administration (ETA), DOL.

ACTION: Notice of availability of funds; solicitation for grant applications.

SUMMARY: The U.S. Department of Labor (DOL), Employment and Training Administration (ETA) announces the first round of competitive grants under a two year Welfare-to-Work (WtW) grant program enacted under the Balanced Budget Act of 1997. The WtW program assists States and local communities to provide the transitional employment assistance needed to move hard-to-employ recipients of Temporary Assistance to Needy Families (TANF) into lasting unsubsidized jobs. WtW grants are targeted to assisting those TANF recipients, and certain noncustodial parents, who have experienced, or have characteristics associated with, long-term welfare dependence. This announcement describes the conditions under which applications will be received under the Welfare-to-Work (WtW) Competitive Grants Program and how DOL/ETA will determine which applications it will fund. This announcement includes all of the information and forms needed to apply for WtW competitive grants.

DATES: The closing date for receipt of applications under this announcement is March 10, 1998. For the funding cycle covered by this announcement, complete applications must be received at the address below no later than 2 p.m. EST (Eastern Standard Time). Except as provided below, grant applications received after this date and time will not be considered. Applications which are not accepted for this announcement must be resubmitted to be considered for future announcements.

ADDRESSES: U.S. Department of Labor, Employment and Training Administration, Division of Acquisition Assistance, Attention: Mr. Willie Harris, SGA/DAA 98–004, 200 Constitution Avenue, NW, Room S4203, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Willie Harris, Grant Management Specialist, Division of Acquisition Assistance, *Telephone:* (202) 219–8694. This is not a toll-free number. This announcement is also being published on the Internet on the Employment and Training Administration's Welfare-to-Work Home Page at http://wtw.doleta.gov. Copies of the Interim Final Rule governing the Welfare-to-Work program, including activities conducted under the competitive grants, are also available on the WtW Home Page. In addition, award notifications will be published on the WtW Home Page.

SUPPLEMENTARY INFORMATION:

I. Authority

Section 403(a)(5)(B) of Title IV of the Social Security Act. Regulations governing the WtW program are at 20 CFR Part 645, published at 62 FR 61588. These Interim Final Regulations were published in the **Federal Register** on November 18, 1997.

II. Submission of Applications

A signed original of the application and three copies must be submitted. An application should be single-spaced and shall not exceed twenty (20) single-sided pages for the Government Requirements/Statement of Work section, as described in the ''Required Content for WtW Competitive Grant Applications—Fiscal Year 1998,'' plus an additional twenty-five (25) pages for Attachments, including the Project Synopsis, Evidence of State and Local Coordination, the Financial Plan and other recommended forms. A font size of at least 12 pitch is required.

Acceptable Methods of Submission

Applications may be hand-delivered or mailed. Hand-delivered applications must be received at the address identified above by the date and time specified. Overnight mail deliveries will be treated as hand-deliveries. Mailed applications that arrive after the closing date will be accepted if they are post-marked at least five (5) days prior to the closing date. Applications submitted via overnight mail that arrive after the closing date will be accepted if they are post-marked at least two (2) days prior to the closing date. Otherwise, late applications will not be accepted. Telegraphed and/or faxed applications will not be accepted.

Applications may be withdrawn by written notice or telegram (including mailgram), or in person if the representative's identity is made known, and the representative signs a receipt for the application.

OMB Approval of Paperwork Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1205–1387. The time required to complete this information collection is estimated to average twenty (20) hours per response, including the time to review the instructions, search existing data resources, gather data needed, and complete and review the information. Comments concerning this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Office of Job Training Programs, Room N4459, Washington, D.C. 20210 (Paperwork Reduction Project 1205–1387). Comments may be reflected in the development of future solicitations.

III. Program Scope and Funding

Competitive grant projects will be expected to achieve the purpose of all WtW grants:

> To provide transitional assistance which moves welfare recipients into unsubsidized employment providing good career potential for achieving economic self-sufficiency.

This transitional assistance is to be provided through a ''work first'' service strategy in which recipients are engaged in employment-based activities. Grant funds may be used to provide needed basic and/or vocational skills training as a post-employment service in conjunction with either subsidized or unsubsidized employment. This flexibility, established in the Regulations, reflects the basic ''work first'' philosophy of the WtW legislation, and recognizes the critical importance of continuous skills acquisition and lifelong learning to economic self-sufficiency.

All competitive grant projects will be expected to be an integral part of a comprehensive strategy for moving eligible individuals into unsubsidized employment in a local, community-based context. Projects should develop and implement innovative approaches that enhance a community's ability to move eligible individuals into self-sustaining employment, create upward mobility paths and higher earnings

potential for WtW participants, and achieve sustainable improvements in the community's service infrastructure for assisting welfare recipients. All applications will be reviewed under the criteria set forth in Part VII of this announcement, including the effectiveness of the proposal in moving TANF recipients who are least job ready into unsubsidized employment, in moving such recipients into unsubsidized employment in labor markets that have a shortage of low-skill jobs, and in expanding the base of knowledge about programs aimed at moving TANF recipients into long-term unsubsidized employment.

Areas of Special Interest

In addition to proposing innovative strategies for moving welfare recipients into lasting unsubsidized employment, applicants are encouraged to consider the following in designing responsive service strategies for the eligible population in their local area:

- Targeted assistance to specific subgroups of the eligible populations such as noncustodial parents, individuals with learning disabilities, individuals who require substance abuse treatment for employment, and public housing residents;
- Development of responsive transportation and child care service systems;
- Use of integrated work and learning strategies to develop skills;
- Creation of job opportunities (including self-employment) that allow for flexibility to address work and family needs while providing income levels that are adequate for self-sufficiency;
- Proactive strategies to involve employers in design of service strategies and implementation of the project;
- Strategies that focus on family-based assistance and that are integrated with children systems (e.g., Child Care, Head Start) that can assist the full family unit;
- Activities to help women access nontraditional occupations; and
- Strategies that reflect effective integration with both the workforce development (e.g., One-Stop) and welfare systems.

The Department is also interested in receiving applications to implement projects in conjunction with community saturation strategies (in which comprehensive services are available to assist all of the eligible residents in a defined community). The Department expects that these applications would be submitted from communities in which there are concentrations of eligible hard-to-employ individuals, there is a reasonable opportunity to provide employment for all such individuals, and there are established partnerships which can contribute a significant level of resources to implement the strategy.

Funding Availability

A total of $368.25 million is available for competitive grant awards in Fiscal Year (FY) 1998 and $343.25 million in FY 99. Approximately $184 million (or 50 percent of FY 98 competitive grant funding) is available for Federal grant assistance through this announcement. The balance of the available funding for FY 98 will be covered in subsequent announcements. Of the funds available in FY 98, the Department aims to distribute approximately 70 percent for projects to serve cities with large concentrations of poverty and 30 percent for projects to serve rural areas. Definitions for ''cities with large concentrations of poverty'' and ''rural area'' can be found in Appendix B of this announcement. Applications to serve rural areas should be targeted to serve eligible residents from subareas that represent concentrations of poverty. Further, as indicated under the Criteria section of this solicitation, applications are strongly encouraged to present innovative strategies to address the needs of areas with concentrations of poverty.

It is expected that most grant awards will be between $1 million and $5 million. Furthermore, it is expected that most grants will serve a minimum of 100 eligible participants. Applications that are outside of this range should provide an explanation of how the project will have substantial community impact (especially for those below $1 million and/or fewer than 100 participants), or how project services will be provided on a local level and targeted to the specific needs of the defined target group (especially for those applications over $5 million).

Award Period

It is expected that the planned performance period for most projects will be between 18 and 30 months. Grant funds are not available for expenditure for longer than three years. No obligation or commitment of funds will be allowed beyond the grant period of performance. Any unspent grant funds must be returned to the Department of Labor.

IV. Eligible Grant Applicants

Private Industry Councils (PIC), political subdivisions of the State (as defined in Appendix B), and private entities (as defined in Appendix B) are eligible to receive grant funds under this announcement. Eligible private entities include community development corporations, community action agencies, community-based and faith-based organizations, disability community organizations, public and private colleges and universities, and other qualified private organizations. Private entities include both non-profit and for-profit organizations but do not include individuals.

Entities other than a PIC or a political subdivision of the State must submit an application for competitive grant funds in conjunction with the PIC(s) or political subdivision(s) for the area in which the project is to operate. The term ''in conjunction with'' shall mean that the application must include a signed certification by both the applicant and either the appropriate PIC(s) or political subdivision(s) indicating that:

1. The applicant has consulted with the appropriate PIC(s)/political subdivision(s) during the development of the application; and
2. The activities proposed in the application are consistent with, and will be coordinated with, the WtW efforts of the PIC(s)/political subdivision(s).

If the applicant is unable to obtain the certification, it will be required to include information describing the efforts which were undertaken to consult with the PIC(s)/political subdivision(s) and indicating that the PIC(s)/political subdivision(s) were provided a sufficient opportunity to cooperate in the development of the project plan and to review and comment on the application prior to its submission to the Department of Labor. ''Sufficient opportunity for PIC/political subdivision review and comment'' shall mean at least 30 calendar days.

The certification, or evidence of efforts to consult, must be with either each PIC or each political subdivision in the service area in which the proposed project is to operate.

State-level Consultation

All applicants for competitive grants, including PICs and political subdivisions, must submit their applications to the Governor or, at the discretion of the Governor, to the designated State administrative entity for the WtW program, for review and comment prior to submission of the application to the Department. For private entities, State review must be subsequent to review by the PIC or political entity. When submitted to the Department, the application must include any comments from the Governor or his/her designee or must include information indicating that the Governor was provided a sufficient

opportunity for review and comment prior to submission to the Department. ''Sufficient opportunity for State review and comment'' shall mean at least 15 calendar days.

Applicants for Multiple Community or National Projects

Consideration will be given to applications which propose multi-community or national strategies to move welfare recipients into long-term unsubsidized employment leading to economic self-sufficiency. For example, an applicant may design a nationwide project to create jobs for welfare recipients in a particular industry. Applications which propose multi-community or national strategies must meet all of the application requirements contained in this Announcement. Specifically, private entities proposing such projects must include the signed certification from the applicable PIC or political subdivision of each SDA in which the project will operate or other evidence indicating the efforts undertaken to obtain the required consultation as described above. Such applications must also demonstrate the required consultation with the Governors of the States in which the project will operate. Applications proposing national projects must comply with all statutory and regulatory requirements and will be rated under the same evaluation criteria as other applications. Applicants should be aware that the extent of local collaboration demonstrated in a national project will be considered as an important factor in the overall strength of the proposal.

Lobbying Disclosure Act of 1995

Entities described in Section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities are not eligible to receive funds under this announcement. The Lobbying Disclosure Act of 1995, Public Law 104–65, 109 Stat. 691, prohibits the award of Federal funds to these entities if they engage in lobbying activities.

V. Program and Administrative Requirements

Participant Eligibility and Funding Expenditures

Each project will be required to meet the targeting provisions described at 20 CFR 645.211–645.213. [NOTE: The WtW Regulations are available at the WtW Internet web site at http://wtw.doleta.gov.] These provisions dictate that a minimum of 70 percent of the funds in each WtW competitive grant must be used to serve hard-to-employ individuals as described in § 645.212. Furthermore, no more than 30 percent of the funds in each grant may be used to serve individuals with characteristics predictive of long-term welfare dependence, as described in § 645.213.

Allowable Uses of Funds

Competitive grant funds shall only be spent for those activities identified in the WtW Regulations, at 20 CFR 645.220, and for appropriate administrative costs.

Administrative Costs

Allowable costs and the 15 percent limitation on administrative costs for WtW competitive grants are defined in the WtW Regulations at 20 CFR 645.235. All proposed costs must be reflected as either a direct charge to specific budget line items, or as an indirect cost. Direct and indirect administrative costs are allowable, but combined, these costs cannot exceed 15 percent of the total grant. The administrative costs negotiated in the final grant document may be below fifteen percent.

Only costs which result from applying a Federally-approved indirect cost rate may be entered on the ''indirect cost'' line item of the budget. If an indirect cost rate is used, the applicant must include documentation from the cognizant Federal agency which includes the approved rate, the cost base against which it is applied, and the approval date.

All applicants will be expected to justify proposed costs (see Item 3 of the Financial Plan in the ''Required Content for WtW Competitive Grants Applications—Fiscal Year 1998''). Profits are not an allowable use of grant funds.

Use of Federal Funds

Federal funds cannot be used to support activities which would be provided in the absence of those funds. Grant funds may cover only those costs which are appropriate and reasonable. Federal grant funds may only be used to acquire equipment which is necessary for the operation of the grant. The grantee must receive prior approval from the DOL/ETA Grant Officer for the purchase and/or lease of any property and/or equipment with a per unit acquisition cost of $5,000 or more, and a useful life of more than one year as defined in the ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments'', codified at 29 CFR Part 97, and ''Grants and Agreements with Institutes of Higher Education, Hospitals and Other Non-Profit Organizations'', codified at 29 CFR Part 95. This restriction includes the purchase of Automated Data Processing (ADP) equipment. A request for such prior approval may be included in the grant application or submitted after the grant award. Requests submitted after the grant award must be directed through the Grant Officer Technical Representative (GOTR) and must include a detailed description and cost of the items to be acquired.

Grant funds also may not be used to cover any project-related costs incurred prior to the effective date of the grant award. In making a grant award, DOL/ETA has no obligation to provide any future additional funding in connection with the grant award.

Pursuant to 20 CFR 645.235(c)(3), the costs of information technology—computer hardware and software—needed for tracking or monitoring under a WtW grant are not subject to the fifteen percent limitation on administrative costs.

Year 2000 Compliance

Any information technology purchased in whole or in part with WtW funds, which is used for a period of time that goes beyond December 31, 1999, must be ''year 2000 compliant.'' This means that such information technology shall accurately process date/time data (including, but not limited to, calculating, comparing and sequencing) from, into and between the twentieth and twenty-first centuries, the years 1999 and 2000, and leap year calculations. Furthermore, ''year 2000 compliant'' information technology, when used in combination with other information technology, shall accurately process date/time data if the other information technology properly exchanges date/time with it.

Assurances and Certifications

The following assurances and certifications will apply to each executed grant agreement:

- Assurances/Non-Construction Programs;
- Debarment & Suspension Certification;
- Certification Regarding Lobbying;
- Drug Free Workplace Certification;
- Certification of Non-delinquency; and
- Non-discrimination and Equal Opportunity Requirements.

These Assurances and Certifications will appear as part of the final grant award document.

Departmental Oversight

The Department reserves the right to conduct oversight and both

programmatic and financial monitoring activities for all competitive grants awarded under the WtW grants program.

Department of Health and Human Services Evaluation of the Welfare-to-Work Program

Competitive grant projects will participate in the evaluation of the WtW grant program by the U.S. Department of Health and Human Services (DHHS), as described in Title IV, section 413(j)(1) of the Social Security Act. The goal of the DHHS evaluation is to expand the base of knowledge about programs aimed at moving the least job ready welfare recipients into unsubsidized employment. The evaluation will collect program and administrative data to determine the range of WtW project designs and the employment outcomes for all WtW grantees, consistent with sec. 413(j)(1)(C) of the Social Security Act. In addition, DHHS will select certain sites at which to qualitatively study the implementation of the WtW program and other sites where net impact and cost effectiveness of the program will be examined quantitatively.

VI. Monitoring & Reporting

Monitoring

The Department shall be responsible for ensuring effective implementation of each competitive grant project in accordance with the Act, the Regulations, the provisions of this announcement and the negotiated grant agreement. Applicants should assume that at least one on-site project review will be conducted by Department staff, or their designees, at approximately the midpoint of the project performance period. This review will focus on the project's performance in meeting the grant's programmatic goals and participant outcomes, complying with the targeting requirements regarding recipients who are served, expenditure of grant funds on allowable activities, integration with other resources and service providers in the local area, and methods for assessment of the responsiveness and effectiveness of the services being provided. Grants may be subject to other additional reviews at the discretion of the Department.

Reporting

Applicants selected as grantees will be required to provide the following reports:

1. *Financial Reporting:* The Department of Labor (DOL) will issue financial reporting instructions for competitive grantees. Specific reporting instructions are awaiting clearance from the Office of Management and Budget. Financial reports will be submitted directly to DOL.

2. *Participant Reporting:* The Department of Health and Human Services (DHHS) will issue participant reporting instructions covering the entire WtW program—both formula and competitive grants. Participant reports for each competitive grant will be submitted in accordance with reporting instructions to be issued by DHHS at a later date.

3. *Other Reporting:* The Department of Labor may negotiate additional reporting requirements with individual grantees, where necessary, for grants management and/or knowledge development purposes.

In addition to required quarterly financial and participant reporting, some grantees may be asked to provide information to the appropriate ETA Regional Office during the early implementation phase of the project for the purpose of project oversight. This information may include project enrollment levels, participant characteristics, and emerging implementation issues.

VII. Review and Selection of Applications for Grant Award

Review Process

The Department will screen all applications to determine whether all required elements are present and clearly identifiable. These elements are described below in the ''Required Content for WtW Competitive Grant Applications—Fiscal Year 1998.'' Failure to include and clearly identify all required elements will result in rejection of the application.

Each complete application will be objectively rated by a panel against the criteria described in this announcement. Applicants are advised that the panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to award grants either with or without discussion with the applicant. In situations where no discussions occur, an award will be based on the applicant's signature on the SF424 form (See Appendix C), which constitutes a binding offer. The Grant Officer will make final award decisions based on what is most advantageous to the Government, considering factors such as:

- panel findings;
- the geographic distribution of the competitive applications;
- the extent to which the competitive applications reflect a reasonable distribution of funds across the areas of special interest identified in this announcement; and
- the availability of funds.

Criteria

The criteria, and the weights assigned to each, which will apply to the review of applications submitted in response to this announcement are:

1. ''Relative Need for Assistance'' [20 points] which shall consider the concentration of poverty and long-term welfare dependence and the lack of employment opportunities in the project service area (up to 9 points); the extent of gaps in the capacity of the local infrastructure to effectively address the employment barriers which characterize the targeted population (up to 6 points); and the responsiveness of the project design to the areas of special interest identified in Part III of this announcement (up to 5 points).

2. ''Innovation'' [20 points] which shall consider the extent to which the project incorporates new and better strategies for moving welfare recipients into lasting unsubsidized employment leading to economic self-sufficiency. These strategies can include, but are not limited to, new and better ways that services can be accessed by participants in the local community, new and better ways for local organizations to work together, or the replication of effective strategies in a new setting.

3. ''Outcomes'' [25 points] which shall consider the quality of the proposed employment and earnings outcomes (up to 10 points); the extent to which the proposed plan of services responds to identified needs, the barriers faced by proposed participants, and the conditions in the local area as well as the likelihood that the proposed service plan will result in the proposed outcomes (up to 12 points); and the reasonableness of the level of investment in relation to the proposed outcomes (up to 3 points).

4. ''Local Collaboration and Sustainability'' [25 points] which shall consider the extent and quality of local partnerships that are involved in and making substantial contributions to the project (up to 4 points); the extent to which the project is coordinated with the WtW formula grant and TANF grant activities and supported by the PIC/political subdivision and local TANF agency (up to 4 points); the commitment and integration of other community resources (up to 7 points); involvement of and participation by local employers (up 5 points); and the extent to which the community and/or the local area has developed plans and commitments to maintain and expand the capacity to serve the target population with local

resources over a sustained period of time (up to 5 points).

5. ''Demonstrated Capability'' [10 points] which shall consider the extent to which the applicant and its partner organizations demonstrate a history of success in serving a comparable target group, the extent of use of current or former welfare recipients in the provision of services, and the extent to which the applicant demonstrates the ability to effectively execute grant management responsibilities.

For those proposals that are deemed by the Grant Officer to be most competitive, applicants for projects to operate in designated Empowerment Zones and Enterprise Communities (EZ/EC) will be eligible for 5 bonus points.

In addition, proposals that are deemed by the Grant Officer to be most competitive, that plan to serve at least 450 WtW participants, and that are willing to participate in a random assignment evaluation may be awarded from zero to five bonus points (based on an HHS assessment of the suitability of the project for evaluation against the criteria outlined in Appendix A). Selected projects may also be able to access additional technical assistance resources, as well as a small amount of funding to offset the additional administrative costs of random assignment. These applicants should submit the additional information identified in Appendix A of this announcement. This information will be submitted as an Addendum to the grant application and will not be counted against the application page limit or count as an Attachment.

Signed at Washington, D.C., this 19th day of December, 1997.

Janice E. Perry,

Grant Officer.

Required Content for WtW Competitive Grant Applications

Fiscal Year 1998

Each application must contain the information and follow the format outlined in this Part. The application should include: (1) Information that responds to these requirements; (2) information that indicates adherence to the provisions described in preceding sections of this announcement; and (3) any other information the applicant believes will address the review and selection criteria.

I. Project Synopsis/Summary

Each application shall provide a project synopsis which identifies the applicant, the type of organization, the project service area, whether the service area is a city with a large concentration of poverty or a rural area, the specific areas of interest identified in the announcement which are addressed by the project, the amount of grant funds requested, the planned period of performance, the planned number of WtW-eligible TANF recipients to be served, the number of noncustodial parents to be served (if applicable), the significant employment barriers which characterize the target group, the planned employment and earnings outcomes, a summary description of the proposed service strategy, and other significant service organizations involved in the delivery of services. This section must be limited to no more than two single-spaced, single-sided pages. A recommended format for this synopsis can be found in Appendix D.

II. Evidence of Required Local and State Consultation

It is the expectation of the Department that, to the extent possible, all applications will be developed in consultation with the appropriate PIC/political subdivision and the Governor. Competitive grant projects should complement the WtW formula program activity, rather than exist independent of, or in conflict with, that program.

Each application must include the signed certification or other evidence of the required consultation with the Governor as described in this announcement. Applications from private entities must also include the signed certification from the appropriate PIC(s) or political subdivision(s) or other evidence indicating the efforts undertaken to obtain the required consultation as described in this announcement. In areas where an entity other than the PIC has been designated by the Governor and approved by the Secretary to administer the WtW formula grant, the applicant should also include evidence of consultation and/or support from that entity. General letters of support (e.g., from community organizations, elected officials, employers) should not be included in this part of the application.

III. Government Requirements/Statement of Work

This section of the application should not exceed 20 single spaced pages. The application should include information of the type described below, as appropriate.

Description of Service Area

—Identify the specific political and geographic jurisdictions (e.g., cities, counties, subsections of cities/counties) which are included in the service area for the project.

—Identify the percent of the population in the service area that has income below the poverty level.

—Identify the percent of the population in the service area that is receiving TANF assistance.

—Identify the percent of the TANF population that has received assistance for 30 months or more, or is within 12 months of losing eligibility for assistance under State or Federal law.

—Identify the unemployment rate in the service area.

—Describe the significant deficiencies in the local area infrastructure that represent significant barriers to moving eligible recipients into permanent employment in an efficient manner (e.g., lack of transportation, labor market with a shortage of low-skill jobs, shortage of employers with appropriate employment opportunities, remoteness from health facilities, limited number of social and support service agencies).

Summary of Strategy for Use of WtW Formula Funds in the Local Area

—Identify the substate service area covered by the WtW formula grant.

—Describe the allocation of formula grant funds among the allowable activities.

—Identify the significant local and community organizations involved and their roles in providing assistance through the formula grant.

—Describe how the proposed competitive grant project will supplement and enhance the capacity of the WtW formula grant activities to effectively serve eligible recipients in the local area who have significant employment barriers.

—In cases where the applicant cannot obtain this information because the State has not yet submitted a complete WtW Formula Grant Plan, the application should so indicate. Absence of this information, in and of itself, will not penalize the applicant.

Analysis of Target Group

—Describe the individuals targeted for assistance through this project, including any noncustodial parents.

—Describe the significant employment barriers which characterize this target group, including the process for identifying those participants who are least job ready.

[**Note:** An adequate analysis of employment barriers of the target group will be a critical factor in evaluating the need for grant assistance and the appropriateness of the proposed plan of services.]

Analysis of Employment Opportunities

—Identify the types of occupations in the local area which are being targeted as appropriate employment opportunities for the target group of this project.

—Describe the justification for the selection of the occupations in terms of their availability and the adequacy of expected placement wage and post-placement earnings potential to achieve self-sufficiency.

Service Strategy

—Identify the specific job readiness, placement (in both subsidized and unsubsidized employment), post-employment, job retention and/or support services to be provided with competitive grant funds as well as services to be leveraged from other sources.

—Describe the rationale for planned enrollments in activities in terms of the employment barriers, infrastructure deficiencies and employment opportunities previously identified above (enrollments in each activity will be reflected in the Quarterly Implementation Plan).

—Where vouchers for services are to be used, describe the process by which vouchers will be distributed and redeemed (in compliance with 20 CFR § 645.230(a)(3)), including who will be eligible, how amounts of vouchers will be determined, and how the grantee will ensure that quality services are being provided.

Service Process

—Describe the comprehensive service process that will be available to participants, and identify the organizations which will be involved in providing specific services/activities. [A process flowchart and/or service matrix may be used to provide this description.] The description should specify what elements of the service strategy are already available in the community, whether through the WtW formula program, the TANF program or from other sources, as well as the elements or services that will be funded through the WtW competitive grant award. Also describe what individual support services, such as mentoring and case management, will be used to maintain participants in the program.

—Describe the specific methods which will be used by the grantee and the local TANF agency to coordinate and work jointly in providing the following services:

—outreach, recruitment, and referral of appropriate recipients for assistance through the project;

—assessment of skills and identification of specific employment barriers;

—counseling and case management; and

—support services.

Integration of Resources

—Identify specific financial resources and organizational/service provider capabilities which are being contributed to provide the full range of assistance to the identified target group for the project. At a minimum, describe the coordination and contributions of local JTPA service providers, local TANF providers, and local housing and transportation authorities. In developing their plans, applicants are encouraged to be mindful of their obligations not to interefere with collective bargaining rights or agreements or to displace employees.

—Describe the process that will be used to maintain and expand the service structure in the local area and engage new partners after receipt of WtW competitive grant funds.

—Describe how the project will develop a sustainable capacity in the local community to effectively move welfare recipients into permanent jobs and to foster the long-term self-sufficiency of the target population. It is expected that project services will provide assistance oriented towards long-term solutions. It is also expected that the need for grant funds to provide this assistance will diminish over time, specifically in the latter stages of the grant performance period.

Employer Support

—Describe the specific responsibilities and approaches for developing relationships with and support of area employers to generate a sufficient number of unsubsidized employment opportunities for the target group. Specifically describe how employers will be encouraged to customize employment opportunities to meet work-related needs (e.g., child care, flexible work schedules) of recipients.

—Identify the employers in the local area who have made commitments to the project and describe the types of commitments made (e.g., number and types of jobs, contribution of employer resources for post-hire support services and/or training).

Planned Outcomes

—Identify and justify planned performance for the comprehensive service strategy on the following measures:

—number of participants to be placed into unsubsidized employment;

—average earnings at placement in unsubsidized employment;

—expected average earnings one year after placement in unsubsidized employment; and

—cost per placement in unsubsidized employment.

In addition, where applicable, for those services supported specifically by WtW competitive grant funds, describe specific process or outcome objectives for those services.

The application may include other measures and planned performance levels as deemed appropriate by the applicant. If these are included, the applicant should briefly describe their relevance to the project.

Implementation Plan

—Identify the critical activities, time frames and responsibilities for effectively implementing the project within the first 60 days after the award of the grant.

—Include a completed quarterly implementation schedule showing the number of participants, enrollments in allowable activities, placements in unsubsidized employment and terminations. (See Appendix D for a recommended format.)

Project Management Plan

Applicants must be able to document that they have systems capable of satisfying the administrative and grant management requirements for WtW grants as defined in 20 CFR Part 645.

—Include a project organizational chart which identifies the organizations, and staff, with key management responsibilities and the specific responsibilities of each organization;

—Describe the specific experience of the applicant and other key organizations involved in the project in serving individuals with significant barriers to employment. The information should include specific projects or grants, a comparison of the characteristics of individuals served to the target group for this project, and the employment outcomes which were achieved.

—As appropriate, describe how current or former welfare recipients will be used to provide services.

—Describe the procedures which will be used to obtain feedback from participants and other appropriate

parties on the responsiveness and effectiveness of the services provided.

Innovation

Recipients of WtW competitive grants are expected to use creativity and innovation to help eligible individuals obtain long-term unsubsidized employment and economic self-sufficiency. The application should describe how the proposed approach represents an innovative method for achieving the employment objectives of the project. Proposed strategies should represent an improvement over, or a variation on, approaches that have traditionally been used in the project service area to assist welfare recipients and other low income unemployed individuals.

Grant recipients are also expected to share knowledge which they develop through the use of innovative approaches. Applicants should describe how they will report lessons learned in the course of the grant implementation, and further, describe their plans for disseminating the knowledge they have gained.

Additional Requirements for Community Saturation Projects

—Describe why a project employing a saturation strategy is appropriate for the project service area and target group.
—Describe the feasibility of a saturation strategy for the project service area and target group (i.e., based on available employment opportunities and other factors).
—Identify the local partners who will be involved in implementing the saturation strategy, the services to be provided and the dollar value of the contribution from each.

IV. Financial Plan

The financial plan shall describe all costs associated with implementing the project that are to be covered with grant funds. All costs should be necessary and reasonable according to the Federal guidelines set forth in the ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments'', codified at 29 CFR Part 97, and ''Grants and Agreements with Institutes of Higher Education, Hospitals and Other Non-Profit Organizations'', codified at 29 CFR Part 95.

The financial plan must contain the following four parts:

1. ''Application for Federal Assistance'' and ''Budget Information Sheet'' by line item for all costs required to implement the project design effectively. Submission of these two completed forms is required. (See Appendix C for these forms.) [NOTE: Although there is no matching requirement for these grants, the Department strongly encourages the leveraging of resources in the implementation of WtW competitive grant projects. On the Budget Information form, the ''Matching/Cost Sharing'' section of the form provides an opportunity for applicants to reflect such leveraged resources.]

2. Detailed line item break-out budget identifying items by cost category (''administration'' and ''activities''). A recommended format is included in Appendix D. At a minimum, the line item budget included in the application must provide the level of information indicated in the recommended format.

3. Budget narrative/justification which provides sufficient information to support the reasonableness of the costs included in the budget in relation to the service strategy and planned outcomes.

4. Quarterly expenditure plan which identifies the planned cumulative expenditure of grant funds by Fiscal Year quarter for the planned period of performance of the project. Expenditures must be identified by grant activity. A recommended format is included in Appendix D.

Appendix A: Instructions for Random Assignment Plan Addendum

Background

The Department of Health and Human Services is charged with the responsibility to conduct a national evaluation of the welfare-to-work (WtW) grants program. The goal of the evaluation is to expand the base of knowledge about effective strategies for moving the least job-ready welfare recipients into unsubsidized employment. Ten to fourteen WtW competitive grant project sites will be selected for an in-depth study of the net impact and cost-effectiveness in moving hard-to-employ recipients into employment. This analysis will rely on both administrative data and, potentially, in-person interviews with program participants. In addition, these sites will participate in a qualitative study of the issues, challenges, and successes associated with implementing and operating WtW programs. This qualitative analysis will rely on on-site interviews with program administrators and staff, administrative data, and potentially, focus groups with WtW participants.

To qualify as a site for the in-depth study, the site must plan to serve at least 450 WtW eligible individuals. Up to five (5) bonus points are available to competitive grant applicants which meet this participant threshold and which are willing to participate in the net impact and cost-effectiveness components of the evaluation. Sites selected to participate in the evaluation will receive additional resources to cover the extra administrative costs associated with participating in the evaluation. Additionally, selected sites will have access to enhanced technical assistance from the evaluation contractor. Finally, the sites will benefit from a high-quality evaluation of their program, as well as the opportunity to have their program showcased nationally to demonstrate innovative techniques for serving hard-to-employ welfare recipients.

What Will Participation in the Net Impact and Cost-Effectiveness Components of the Evaluation Mean for the Selected Sites

To effectively measure the net impact and cost-effectiveness of specific service strategies, an experimental design involving the random assignment of individuals to either treatment status (receipt of WtW services) or control status (receipt of regular TANF services) will be used to estimate program net impacts. The random assignment approach will also be applied to test impacts among a variety of WtW services.

Since the level of funding available to a particular WtW site will not be sufficient to serve the entire population eligible in that site, the applicant must demonstrate the capacity to design a random assignment study so that no fewer participants will be served by the WtW program than would have been served in the absence of the study. Random assignment will only change the mechanism by which program administrators would otherwise respond to the funding shortfall (e.g., waiting lists, first-come first-serve, priority groups). Nor will random assignment require excluding the control group from services—the control group will be eligible to receive the regular TANF services available to participants in the TANF program.

Application Process

WtW applicants who would like to be considered as net impact and cost-effectiveness evaluation site should submit an ''Evaluation Addendum'' in addition to their programmatic application. The addendum should address the following items:

• Appropriateness of site for evaluation purposes. Because of the statistical requirements associated with random assignment, programs selected

for the evaluation will need to serve at least 450 participants in this grant cycle (with funding available over three years). Preference may be given to programs that address the areas of interest identified in the SGA and that will be able to be implemented quickly. The application should explain the importance of the program model for learning about effective strategies for hard-to-employ recipients. It also should include evidence of the applicant's understanding of what is required to carry out a net impact evaluation program under the coordination of a contractor, and evidence of the site's commitment to provide the necessary supports and resources to ensure the success of the project.

- Evidence of capacity to participate. Evaluation sites must be willing and able to collect administrative data on participants' experiences and outcomes. The following are specific examples of evaluation site requirements: utilizing staff time to oversee the administration of special data collection forms and reviewing them for completeness; having on staff personnel with knowledge about or experience in data systems management and extraction; utilizing staff time to contact program participants to set up meetings or elicit their cooperation in focus groups; helping to identify current address or additional contact information for participants who cannot be located after program termination; and utilizing management and staff time to meet with evaluation staff for individual and/or group interviews and information exchange. The application should list the ability of the site to participate in these tasks. It also should identify the key individuals who will work on the evaluation along with a short description of the nature of their contribution and the percentage of their time available for the project. There also should be evidence of support from management of the organization for the purposes of research and evaluation. Applicants are encouraged to discuss relevant staff experience with research and evaluation.
- Budget for reimbursement of evaluation costs. Additional grant funds are available to help defray the incremental administrative costs associated with the site's participation in the national evaluation. This may include the costs associated with special data collection and reporting (above that required of all WtW grant recipients), monitoring case status and ensuring that cases receive the services appropriate under the arrangements agreed upon for the evaluation, supporting the evaluation by notifying participants and arranging for meetings between evaluators and WtW participants, and providing liaison between the program and the evaluator as a part of the national evaluation team. Based on past experience, it is estimated that the costs to carry out these special tasks equate to between 1 and 1.5 full time employees (FTE) per year for a mid-range support staff person. WtW applicants applying to be considered as participants in this component of the evaluation should include a budget attachment that includes the costs of evaluation (use a budget format similar to the suggested format in Appendix D).

Sites that are interested in participating in a random assignment experiment but are unsure whether they meet the criteria are encouraged to submit an application for the bonus points. Efforts will be made to work closely with the selected sites to facilitate participation in the study and to minimize the administrative burden of random assignment.

Appendix B: Definitions of Key Terms

City with Large Concentration of Poverty—Any county that contains an urban center of more than 50,000 people with a poverty rate of greater than 7.5 percent.

Noncustodial Parent—A parent of a child whose custodial parent is an eligible TANF recipient.

Private Entity—Any organization, public or private, which is neither a PIC nor a political subdivision of a State.

Private Industry Council (PIC)—from § 645.120 of the WtW Regulations—A Private Industry Council established under Section 102 of the Job Training Partnership Act, which performs the functions authorized at Section 103 of the JTPA.

Political Subdivision—A unit of general purpose local government, as provided for in State laws and/or Constitution, which has the power to levy taxes and spend funds and which also has general corporate and police powers.

Rural Area—(1) Any county that does not contain an urban center of more than 50,000 people, and where at least 50 percent of the geographical area of the county has a population density of less than 100 persons per square mile; or (2) in counties where there is an urban center, a rural area within the county that constitutes, or is part of, a distinct rural labor market.

Appendix C: Application for Federal Assistance (Standard Form 424) Budget Information Sheet

Note: In completing the Standard Form 424, the applicant should indicate in Item 11 of the form whether the project is to operate in a city with a large concentration of poverty or in a rural area; identify the EC/EZ included in the project service area, if applicable; and identify any of the areas of interest identified in the announcement which are addressed by the project.

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

(INSTRUCTIONS ON BACK OF FORM)

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. **Personnel:** Show salaries to be paid for project personnel.

2. **Fringe Benefits**: Indicate the rate and amount of fringe benefits.

3. **Travel**: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.

4. **Equipment**: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.

5. **Supplies**: Include the cost of consumable supplies and materials to be used during the project period.

6. **Contractual**: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.

7. **Other**: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. **Total, Direct Costs**: Add lines 1 through 7.

9. **Indirect Costs**: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.

10. **Training /Stipend Cost:** (If allowable)

11. **Total Federal funds Requested**: Show total of lines 8 through 10.

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

APPENDIX D: Recommended Formats for Project Synopsis, Project Line-Item Budget, Implementation Schedule, Quarterly Expenditure Plan, Service Plan Matrix

RECOMMENDED PROJECT SYNOPSIS FORMAT

Project Applicant Name:

Type of Organization:

____ PIC
____ Political Subdivision (City/County)

____ Private Entity
In conjunction with (identify specific PIC or Political Subdivision):

Applicant Contact:
Title:
Address:
Telephone: ( ) _____

E-mail address: _____

Fax: ( ) _____

Project Service Area (Counties or area to be served):

City _____
Rural Area _____

Funds Requested: $ _____

Period of Performance: From _____
To _____

AREAS OF SPECIAL INTEREST
(check all that apply)

Target Populations

____ Noncustodial Parents
____ Learning Disabled Individuals
____ Substance Abusers
____ Public Housing Residents

Key Service Strategies

____ Expanded/accessible Transportation Services
____ Expanded/accessible Child Care Services
____ Integrated Work and Learning Skills Development
____ Family-focused Assistance
____ Job Creation/Self-Employment
____ Non-traditional Occupations for Women

Integration Strategies

____ Proactive Employer Involvement
____ Integration with Child and other Family Assistance Services
____ Integration with Workforce Development and Welfare Systems
____ Community Saturation

OUTCOME MEASURES

Number of Participants: _____
Number of Noncustodial Parents: _____
Number of Placements (unsubsidized): _____

Cost Per Placement (unsubsidized): $ _____
Expected Average Wage at Placement: $ _____
Expected Average Wage One Year After Placement: $ _____

Notes (include descriptors of key innovative elements):

RECOMMENDED PROJECT LINE ITEM BUDGET FORMAT

Expense Item	Administration	Services	Total
Staff Salaries*			
Staff Fringe Benefits --_____% of Salaries			
Staff Travel --Project Area: _____ --Other: _____**			
Facilities and Communications			
Consumable Office Supplies			
Furniture and Equipment --Use/Depreciation: _____ --Purchase: _____*** --Lease: _____***			
Consumable Testing & Instructional Materials			
Tuition Payments/Vouchers			
OJT Reimbursements			
Participant Wages and Fringe Benefits			
Supportive Services			
Indirect Cost****			
Other*****			
TOTAL			

* Attach a list of staff positions and the number of Full-Time Equivalent (FTE) staff assigned to each for the project.
** Provide a description of out-of-project area staff travel and the rationale for such travel.
*** Attach a list of equipment/furniture items with a unit cost of $5000 or more to be purchased or leased, and, for purchased items, a justification for purchase vs. lease or use charges. Also, attach a list of equipment/furniture items where the total cost of all such items being charged to the grant is more than $20,000, and provide an explanation of the need for the items.
**** Attach appropriate documentation of approved rate by cognizant agency for any costs on this item.
***** Attach a description of the types of expenses and services included in this item.

RECOMMENDED IMPLEMENTATION SCHEDULE FORMAT FOR PRESENTATION OF NUMBERS OF PLANNED PARTICIPANTS

Performance Factor	Fiscal Year Quarter (through mo./yr.)							
								Cumulative Totals
QUARTERLY PERFORMANCE GOALS								
Total Participants								
Total Terminations								
ACTIVITY ENROLLMENTS								
Total Subsidized Employment								
Community Service								
Work Experience								
Job Creation Wage Subsidies								
On-the-Job Training								
Readiness and Placement Services								
Post-Employment Services								
Job Retention and Support Services								
TOTAL ENTERED UNSUBSIDIZED EMPLOYMENT								

NOTES: 1) If a proposed project has more than eight operational periods, please use more than one template to supply the requested information for all periods.
2) The shaded areas may be completed if the information is useful to the applicant, but is not necessary for the WtW Competitive grant application.

RECOMMENDED FORMAT FOR PRESENTATION OF

PLANNED CUMULATIVE QUARTERLY EXPENDITURES OF WTW COMPETITIVE GRANT FUNDS

Cost Category	Fiscal Quarter (beginning and ending dates)							
Total Expenditures								
Administration								
Community Service								
Work Experience								
Job Creation Wage Subsidies								
On-the-Job Training								
Readiness, Placement and Post-Employment Services								
Job Retention								
Support Services								

RECOMMENDED SERVICE PLAN MATRIX FORMAT

Type of Service	Competitive Grant Funds	WtW Formula Funds	TANF Funds	Other Resources
JOB READINESS & PLACEMENT				
Outreach & Recruitment				
Assessment & Service Plng.				
Job/Career Counseling				
Job Search Skills				
Job Development & Placement				
Relocation Assistance				
POST-EMPLOYMENT TRAINING				
Literacy/ESL/Remediation				
Classroom Vocational/ Occupational				
Entrepreneurial				
EMPLOYMENT ACTIVITIES				
Community Service/Work Experience				
Subsidized Employment - Public				
Subsidized Employment - Private				
On-the-Job Training				
SUPPORT/JOB RETENTION SVS.				
Transportation				
Child Care				
Personal Counseling/ Mentoring/ Case Management				
Income Support				
Other (Identify)				
Other (Identify)				

Instructions for Completing Service Matrix - For the Competitive Grant, WtW Formula and TANF Funds columns, indicate the percent of the total estimated cost of providing the service to the targeted participants for the project which is being borne by that funding source.

For the Other Resources column, identify other entities which are contributing resources or capabilities to provide the service. The following codes should be used to identify the other resources:

1=JTPA
2=Employer
3=Public Employment Service
4=Federal/State/local Education Funds
5=Student Financial Aid
6=Other Federal Grant Funded Programs
7=State/Local Transportation Funds
8=Other (identify)_____
9=Other (identify)_____
10=Other (identify)_____

[FR Doc. 97–33694 Filed 12–29–97; 8:45 am]

BILLING CODE 4510–30–C

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–167)]

NASA Advisory Council (NAC), Task Force on the Shuttle-Mir Rendezvous and Docking Missions; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NAC Task Force on the Shuttle-Mir Rendezvous and Docking Missions.

DATES: Wednesday, January 14, 1998, 1:00 p.m. to 4:00 p.m.

ADDRESSES: Lyndon B. Johnson Space Center, National Aeronautics and Space Administration, Building 1, Room 920L, Houston, TX 77058–3696.

FOR FURTHER INFORMATION CONTACT:

Mr. Dennis McSweeney, Code IH, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4556.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review the readiness of the STS–89 Shuttle-Mir Rendezvous and Docking Mission;

—Review the Task Force fact-finding meeting held at NASA Headquarters in Washington, DC, on December 15, 1997.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: December 19, 1997.

Alan M. Ladwig,

Associate Administrator for Policy and Plans.

[FR Doc. 97–33779 Filed 12–29–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice No. 98168]

NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Aviation Operations Systems (AOS) Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committeee, Aviation Operations Systems Subcommittee meeting.

DATES: January 14 and 15, 1998, 8:00 a.m. to 5:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Ames Research Center, Building 262, Room 100, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT:

Dr. J. Victor Lebacqz, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 650/604-5792.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Agenda topics for the meeting are as follows:

—Summary of AOS Program

—Review of Safety-Focused and Capacity-Focused Efforts of AOS

—Review ''Human/Automation Integration Research'' Element of AOS

—Review ''Methods for Analysis of System Stability and Safety'' Element of AOS.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: December 19, 1997.

Alan M. Ladwig,

Associate Administrator for Policy and Plans.

[FR Doc. 97–33780 Filed 12-29–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–169)]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Structure and Evolution of the Universe Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee, Structure and Evolution of the Universe Subcommittee.

DATES: Thursday, February 5, 1998, 8:30 a.m. to 5:00 p.m., and Friday, February 6, 1998, 8:30 a.m. to 5:00 p.m.

ADDRESSES: NASA Headquarters, Conference Room MIC 7 A/B West, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Alan N. Bunner, Code SA, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0364.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Overview of Meeting Goals
—News from NASA Headquarters
—Report from Other Committees
—Science Updates
—Update on SEU Missions and Overview of New Missions
—Public Relations
—Long Duration Balloon Program Update

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: December 19, 1997.

Alan M. Ladwig,

Associate Administrator for Policy and Plans.

[FR Doc. 97–33781 Filed 12–29–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Notice of Submission for OMB Review; Comment Request

SUMMARY: The National Endowment for the Arts (''Endowment'') has requested

that the Office of Management and Budget (OMB) approve a series of new collections of information under the Paperwork Reduction Act. The purpose of the information collections, which will be conducted through surveys and focus groups over a three year-period, is to help the Endowment assess the efficiency and effectiveness with which it serves its customers, and to design actions to address areas identified for improvement.

DATES: All comments must be submitted to OMB by January 28, 1998.

ADDRESSES: All written comments should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the National Endowment for the Arts, 725 17th Street, NW, Room 10235, Washington, DC 20503. The request for approval will be available for public inspection at the National Endowment for the Arts, room 628, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, between the hours of 9:00 a.m. and 5:30 p.m.

FOR FURTHER INFORMATION CONTACT: Martha Jones, Management Analyst, Office of the Director of Administration, National Endowment for the Arts, room 628, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5408 (202/682–5496 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 establishes policies and procedures for controlling the paperwork burdens imposed by Federal agencies on the public. The Act vests OMB with regulatory responsibility over these burdens, and OMB has promulgated rules on the clearance of collections of information by the Federal agencies.

Executive Order 12862, ''Setting Customer Service Standards,'' states that the Federal Government must be customer-driven to carry out the principles of the National Performance Review. It directs all executive departments and agencies providing significant services directly to the public to provide those services in a manner that seeks to meet the customer service standards established in the executive order.

The Endowment intends to establish a mechanism through which it can explore issues of mutual concern, i.e., the kind and quality of desired services, with its major outside customers, including nonprofit arts organizations; artists; State, local, and special jurisdictional arts agencies; and arts service organizations.

Areas of concern to the Endowment and its customers will change over time, and it is important the Endowment be able to evaluate customer concerns quickly. Accordingly, the Endowment requests OMB to grant ''generic'' approval, for a three-year period, of focus groups and surveys of the Endowment's outside customer groups. Participation in the focus groups and surveys will be voluntary.

The Endowment published a notice of intention to request OMB approval of these collections in the **Federal Register** September 17, 1997. No comments were received in response to the notice.

This voluntary collection of information will put a slight burden on an extremely small percentage of the public. The Endowment expects to distribute survey questionnaires to approximately 600 persons during the first year of the three-year period, representing a total burden of about 150 hours. The Endowment also expects to conduct focus groups involving a total of 10 persons in a given year, with a total annual burden of about 90 hours, including travel time. (A small portion of this time may be allocated to participants' completion of short written questionnaires at focus group meetings.)

Issued in Washington, DC, December 23, 1997.

Laurence M. Baden,

Director of Administration, National Endowment for the Arts.

[FR Doc. 97–33894 Filed 12–29–97; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Submission for OMB Review; Comment Request

December 11, 1997.

The National Endowment for the Arts (NEA) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 [Pub. L. 104–13, 44 U.S.C. Chapter 35]. Copies of this ICR, with applicable supporting documentation, may be obtained by calling the National Endowment for the Arts, Civil Rights Office, Angelia C. Richardson, Director (202) 682–5454. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 682–5695 between 10:00 a.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington DC 20503 [(202) 395–7316], on or before January 29, 1998.

The Office of Management and Budget (OMB) is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of its Civil Rights Checklist. This entry is issued by the Endowment and contains the following information; (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Agency: National Endowment for the Arts.

Title: Civil Rights Checklist.

OMB Number: 3135–0112.

Frequency: Annually.

Affected Public: Nonprofit organizations, state and local arts agencies.

Estimated Number of Respondents: 1,062.

Estimated Time Per Respondents: 1 hour.

Total Burden Hours: 1,062.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): 0.

Description: The National Endowment for the Arts is mandated by law to ensure that its grantees are in compliance with its nondiscrimination regulations—Title VI of the Civil Rights Act of 1964, Title IX of the Education

Amendments of 1972, Age Discrimination Act, Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, and the Department of Justice's Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs—through compliance reviews. The Compliance Review checklists are returned and analyzed by the Endowment to ensure that our recipients' programs, activities and facilities are in compliance with the laws/regulations that govern receipt of federal funds and that the rights of all people are protected without regard to race, color, sex, age, national origin, religion and disability.

ADDRESSES: Angelia C. Richardson, Director, Civil Rights Office, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Room 812, Washington, D.C. 20506–0001, telephone (202) 682–5454 (this is not a toll free number), fax (202) 682–5553.

Angelia C. Richardson,

Director, Civil Rights Office, National Endowment for the Arts.

[FR Doc. 97–33895 Filed 12–29–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Submission for OMB Review; Comment Request

December 11, 1997.

The National Endowment for the Arts (NEA) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1955 [Public Law 104–13, 44 U.S.C. Chapter 35]. Copies of this ICR, with applicable supporting documentation, may be obtained by calling the National Endowment for the Arts, Civil Rights Office, Angelia C. Richardson, Director (202) 682–5454. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 682–5695 between 10:00 a.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503 [(202) 395–7316], on or before January 29, 1998.

The Office of Management and Budget (OMB) is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of its Section 504 Checklist. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Agency: National Endowment for the Arts.
Title: Section 504 Checklist.
OMB Number: 3135–0112.
Frequency: Annually.
Affected Public: Nonprofit organizations, state, local arts agencies.
Estimated Number of Respondents: 1,062.
Estimated Time Per Respondents: 1
Total Burden Hours: 1,062.
Total Annualized Capital/Startup Costs: 0
Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): 0
Description: The National Endowment for the Arts is mandated by law to ensure that its grantees are in compliance with its nondiscrimination regulations—Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Age Discrimination Act, Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, and the Department of Justice's Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs—through compliance reviews. The Compliance Review checklists are returned and analyzed by the Endowment to ensured that our recipients' programs, activities and facilities are in compliance with the laws/regulations that govern receipt of federal funds and that the rights of all people are protected without regard to race, color, sex, age, national origin, religion and disability.

ADDRESSES: Angelia C. Richardson, Director, Civil Rights Office, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Room 812, Washington, D.C. 20506–0001, telephone (202) 682–5454 (this is not a toll free number), fax (202) 682–5553.

Angelia C. Richardson,

Director, Civil Rights Office, National Endowment for the Arts.

[FR Doc. 97–33896 Filed 12–29–97; 8:45 am]

BILLING CODE 7537–01–M

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Submission for OMB Review; Comment Request

AGENCY: The National Endowment for the Humanities.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), The National Endowment for the Humanities (''NEH'') is issuing notice of our intent to amend the system of records to include a new routine use. The disclosure is required by the Personnel Responsibility and Work Opportunity Reconciliation Act (PRWORA, Pub. L. 104–193). We invite public comment on this publication.

DATES: Persons wishing to comment on the proposed routine use must do so by January 29, 1998.

EFFECTIVE DATE: The proposed routine use will become effective as proposed without further notice on January 29, 1998, unless comments dictate otherwise.

ADDRESSES: Interested individuals may comment on this publication by writing to: Nancy E. Weiss, The National Endowment for the Humanities, 1100 Pennsylvania Ave., NW. Room #530, Washington, DC 20506, Telephone (202) 606–8322, Fax (202) 606–8600 or e-mail nweiss@neh.fed.us.

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, The National Endowment for the Humanities, 1100 Pennsylvania Ave., NW. Room #530, Washington, DC 20506, Telephone (202) 606–8322, Fax (202) 606–8600 or e-mail nweiss@neh.fed.us.

SUPPLEMENTARY INFORMATION: Pursuant to Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the NEH will disclose data from its NEH–3 system of records to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for use in the National Database of New Hires, part of the Federal Parent Locator Service (FPLS) and Federal Tax Offset System, DHHS/OCSE No. 09–90–0074. A description of the Federal Parent Locator Service may be found at 62 FR 51663 (October 2, 1997).

FPLS is a computerized network through which States may request location information from Federal and State agencies to find non-custodial parents and their employees for purposes of establishing paternity and securing support. On October 1, 1997, the FPLS was expanded to include the National Directory of New Hires, a database containing employment information on employees recently hired, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. October 1, 1998, the FPLS will be expanded further to include a Federal Case Registry. The Federal Case Registry will contain abstracts on all participants involved in child support enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a State child support case, the State will be notified. State requests to the FPLS for location information will continue to be processed after October 1, 1998.

When individuals are hired by the NEH, we may disclose to the FPLS their names, social security numbers, home addresses, dates of birth, dates of hire, and information identifying us as the employer. We also may disclose the FPLS names, social security numbers, and quarterly earnings of each NEA or NEH employee, within one month of the end of the quarterly reporting period. Information submitted by the NEH to the FPLS will be disclosed by the Office of Child Support Enforcement to the Social Security Administration for verification to ensure that the social security number provided is correct. The data disclosed by NEH to the FPLS will also be disclosed by the Office of Child Support Enforcement to the Secretary of the Treasury for use in verifying claims for the advance payment of the earned income tax credit or to verify a claim of employment on a tax return.

Accordingly, the NEH–3 system notice originally published in 47 FR 21352 (May 18, 1982), and most recently amended in 49 FR 42998 (October 25, 1984), is further amended by addition of the following routine use:

* * * * *

Routine use of records maintained in the system, including categories of users and the purposes of such uses:

1115.6(c) The names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees may be disclosed to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform law, Pub. L. 104–193).

Nancy E. Weiss,

Advisory Committee, Management Officer.

[FR Doc. 97–33924 Filed 12–29–97; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date & Time: January 14 and January 15, 1998; 8:30 a.m. to 5:00 p.m.

Place: NSF, 4201 Wilson Boulevard, Rooms 530 and 580 Arlington, Virginia 22230.

Contact Person: Dr. Sunil Saigal, Program Director, Mechanics and Materials Programs, Dr. Jorn Larsen-Basse, Program Director, Surface Engineering and Tribology Program, Division of Civil and Mechanical Systems, Room 545, NSF, 4201 Wilson Blvd., Arlington, VA 22230. 703/306–1361, x 5069 and x 5073.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: December 22, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–33898 Filed 12–29–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Computer and Communications Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Computer and Communications Research (1192).

Date: January 12–13, 1998.

Time: 8:00 a.m.–5:00 p.m.

Place: Room 1150.

Type of Meeting: Closed.

Contact Person: Dr. Zeke Zalcstein, Program Director, C–CR, room 1145, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, 703/306–1914.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted the National Science Foundation for financial support.

Agenda: To review and evaluate proposals submitted to the Theory of Computing Program as part of a selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552bc (4) and (6) of the Government in the Sunshine Act.

Dated: December 22, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–33897 Filed 12–29–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following six meetings:

Name and Committee Code: Special Emphasis Panel in Materials Research #1203

Date, Time & Room:

January 14, 1998; 8:30 am–5:00 pm; NSF Conference Room 380
January 19, 1998; 8:30 am–5:00 pm; NSF Conference Room 390
January 20, 1998; 8:30 am–5:00 pm; NSF Conference Room 390
January 21, 1998; 8:30 am–5:00 pm; NSF Conference Room 390
January 22, 1998; 8:30 am–5:00 pm; NSF Conference Room 320
January 23, 1998; 8:30 am–5:00 pm; NSF Conference Room 320

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed

Contact Person: Dr. Lorretta J. Inglehart, Program Director, National Facilities and Instrumentation, Division of Materials Research, Room 1065, National Science Foundation 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1817.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the 1998 Proposals for Instrumentation in Materials Research (IMR) as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 22, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–33899 Filed 12–29–97; 8:45 am]

BILLING CODE 2555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (1208).

Date and Time: Thursday, January 15, 1998 8:00am–5:00pm; Friday, January 16, 1998 8:00am–5:00pm.

Place: Room 920, 4201 Wilson Blvd. Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Marvin Goldberg, Program Director for Elementary Particle Physics, Division of Physics, Rm 1015, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1894.

Purpose of Meeting: To review proposals submitted to NSF for financial support, especially in experiments involving international collaborations.

Agenda: Reviewing and evaluating Elementary Particle Physics proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 22, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–33900 Filed 12–29–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Undergraduate Education; Notice of Meetings

This notice is being published in accord with the Federal Advisory Committee Act (Pub. L. 92–463, as amended). During the periods January through April, 1997, the Special Emphasis Panel will be holding panel meetings to review and evaluate research proposals. The dates, contact person, and types of proposals are as follows: Special Emphasis Panel in Division of Undergraduate Education.

1. *Date:* January 11–13, 1998.

Contact: Terry Woodin, Program Director, Room 835, 703–306–1666 TIMES: 7:30 p.m. to 9:30 p.m. (January 11); 8:30 a.m. to 5:00 p.m. each day (January 12–13).

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Proposal: NSF Collaboratives for Excellence in Teacher Preparation (CETP) Program Reverse Site.

2. *Date:* January 21–24, 1998.

Contact: Duncan McBride, Program Director, Room 835, 703–306–1666 TIMES: 7:30 p.m. to 9:30 p.m. (January 21); 8:30 a.m. to 5:00 p.m. each day (January 22–23); 8:30 a.m. to 1:00 p.m. (January 24) PLACE: Doubletree Hotel, 300 Army/Navy Drive, Arlington, VA.

Type of Proposal: Instrumentation & Laboratory Improvement (ILI) Program Phase I.

Date: January 28–31, 1998.

Contact: Duncan McBride, Program Director, Room 835, 703–306–1666 TIMES: 7:30 p.m. to 9:30 p.m. (January 28); 8:30 a.m. to 5:00 p.m. each day (January 29–30); 8:30 a.m. to 1:00 p.m. (January 31) PLACE: Doubletree Hotel, 300 Army/Navy Drive, Arlington, VA.

Type of Proposal: Instrumentation & Laboratory Improvement (ILI) Program Phase II.

4. *Date:* April 6–8, 1998.

Contact: Terry Woodin, Program Director, Room 835, 703–306–1666 TIMES: 7:30 p.m. to 9:30 p.m. (April 6); 8:30 a.m. to 5:00 p.m. each day April 7–8.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA TYPE OF.

Proposal: NSF Collaboratives for Excellence in Teacher Preparation (CETP). Program Reverse Site (3rd Year).

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Directorate as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 22, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–33901 Filed 12–29–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. STN 50–457]

Commonwealth Edison Company (Braidwood Nuclear Station, Unit No. 2); Exemption

I.

Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating License No. NPF–77, which authorizes operation of the Braidwood Nuclear Station, Unit 2. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

II.

In its letter dated November 30, 1994, as supplemented on May 11, 1995, the licensee requested an exemption from the Commission's regulations. Title 10 of the Code of Federal Regulations, Part 50, Section 60 (10 CFR 50.60), ''Acceptance Criteria for Fracture Prevention Measures for Lightwater Nuclear Power Reactors for Normal Operation,'' states that all lightwater nuclear power reactors must comply with the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary as stated in Appendices G and H to 10 CFR Part 50. Appendix G to 10 CFR Part 50 defines pressure-temperature (P–T) limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests to which the pressure boundary may be subjected over its

service lifetime, and that are obtained by conforming to the methods of analysis and the margins of safety in the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code), Section XI, Appendix G. It is required in 10 CFR 50.55a that any reference to the ASME Code, Section XI, in 10 CFR Part 50 refers to the addenda through the 1988 Addenda and editions through the 1989 Edition of the Code unless otherwise noted. It is specified in 10 CFR 50.60(b) that alternatives to the described requirements in Appendix G to 10 CFR Part 50 may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To mitigate low-temperature overpressure transients that would produce pressure excursions exceeding the required limits while the reactor is operating at low temperatures, the licensee installed a low-temperature overpressure protection (LTOP) system. The system contains pressure-relieving devices called power-operated relief valves (PORVs). The PORVs are set at a low enough pressure so that if an LTOP transient occurred, the mitigation system would prevent the pressure in the reactor vessel from exceeding the required limits. To prevent the PORVs from lifting as a result of normal operating pressure surges, some margin is needed between the PORV setpoint and the normal operating pressure. In addition, normal operating pressure must be high enough to prevent damage to reactor coolant pumps that may result from cavitation or inadequate differential pressure across the pump seals. Hence, the licensee must operate the plant within a pressure window that is defined as the difference between the minimum pressure required for reactor coolant pumps and the operating margin to keep the PORVs from lifting. When instrument uncertainty is considered, the operating window is small and presents difficulties for plant operation.

The licensee has requested the use of the ASME Code Case N–514, ''Low Temperature Overpressure Protection,'' for determining the LTOP system setpoint. Code Case N–514 allows use of an LTOP system setpoint so that system pressure does not exceed 110 percent of the P–T limits during an LTOP event. Code Case N–514 is consistent with guidelines developed by the ASME Working Group on Operating Plant Criteria to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure-relieving devices used for LTOP. The content of this code case has been incorporated into the ASME Code, Section XI, Appendix G, and was published in the 1993 Addenda to Section XI.

III.

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 (1) when the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule * * *.''

The underlying purpose of 10 CFR 50.60 and 10 CFR Part 50, Appendix G, is to establish fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences, to which the pressure boundary may be subjected over its service lifetime. Section IV.A.2 of Appendix G to 10 CFR Part 50 requires that the reactor vessel be operated with P–T limits at least as conservative as those obtained from following the methods of analysis and the required margins of safety of Appendix G of Section XI of the ASME Code.

Appendix G of the ASME Code requires that the P–T limits be calculated (1) Using a safety factor of 2 on the principal membrane (pressure) stresses, (2) assuming a flaw at the surface with a depth of one-fourth of the vessel wall thickness and a length of 6 times its depth, and (3) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the Braidwood reactor vessel material.

For determining the LTOP system setpoint, the licensee proposed to use safety margins based on an alternate methodology consistent with ASME Code Case N–514. The code case allows the setpoint for mitigating LTOP events to be so determined that the maximum pressure in the vessel would not exceed 110 percent of the Appendix G P–T limits. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on the principal membrane stresses, the proposed criteria will produce adequate margins of safety for the reactor vessel during LTOP transients and, thus, will satisfy the underlying purpose of 10 CFR 50.60 for fracture toughness requirements. Further, by relieving the operational restrictions, the potential for undesirable lifting of the PORVs would be reduced, thereby making the plant safer.

IV.

For the foregoing reasons, the NRC staff has concluded that the licensee's proposed use of the alternate methodology in determining the acceptable setpoint for LTOP events will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2)(ii), in that application of 10 CFR 50.60 is not necessary in order to achieve the underlying purpose of this regulation which is to provide adequate fracture toughness of the reactor pressure boundary.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not endanger life or property or the common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants an exemption from the requirements of 10 CFR 50.60; in accordance with ASME Code Case N–514, the LTOP system setpoint may be determined so that system pressure does not exceed 110 percent of the Appendix G P–T limits in order to be in compliance with these regulations. This exemption is applicable only to LTOP conditions during normal operation.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption will not have a significant effect on the quality of the human environment (62 FR 59008).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 12th day of December 1997.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–33846 Filed 12–29–97; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

OMB Approval of Agency Information Collection Activity; Termination of Single Employer Plans; Missing Participants; PBGC Forms 500–501, 600–602; Payment of Premiums; PBGC Form 1–ES and PBGC Form 1 (Including Schedule A)

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of OMB approval.

SUMMARY: This notice announces that the Office of Management and Budget has extended its approval of the collections of information contained in the Pension Benefit Guaranty Corporation's regulations on Termination of Single Employer Plans, Missing Participants, and Payment of Premiums and implementing forms and instructions.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY/TDD, call the Federal relay service at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: OMB has extended its approval through December 31, 2000, under OMB control number 1212–0036, of the collection of information requirements contained in (1) the PBGC's new regulations on Termination of Single Employer Plans and Missing Participants, 29 CFR Parts 4041 and 4050 (62 FR 60424, November 7, 1997) and implementing forms and instructions (PBGC Forms 500–501 and 600–602), and (2) the PBGC's existing regulations on Termination of Single Employer Plans and Missing Participants and implementing forms and instructions.

OMB also has extended its approval through December 31, 2000, under OMB control number 1212–0009, of the collection of information requirements contained in the PBGC's regulation on Payment of Premiums, 29 CFR Part 4007, and implementing forms and instructions (PBGC Form 1–ES and PBGC Form 1 (including Schedule A).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Issued in Washington, D.C. this 22nd day of December, 1997.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–33873 Filed 12–29–97; 8:45 am]

BILLING CODE 7708–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review: Comment Request for Reclearance of Expiring Information Collections: OPM Form 1496 and 1496A

AGENCY: Office of Personnel Management.

ACTION: Notice

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) will submit to the Office of Management and Budget a request for reclearance of an information collection. OPM Forms 1496 and 1496A, Application for Deferred Retirement (Separations before October 1, 1956) and Application for Deferred Retirement (Separations on or after October 1, 1956) are used by eligible former Federal employees to apply for a deferred Civil Service annuity. Two forms are needed because there was a major revision in the law effective October 1, 1956; this affects the general information provided with the forms.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 3,000 OPM Forms 1496 and 1496A will be completed annually. We estimate it takes approximately 1 hour to complete the form. The annual burden is 3,000 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov.

DATES: Comments on this proposal should be received on or before March 2, 1998.

ADDRESSES: Send or deliver comments to—Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Budget & Administrative Services Division, (202) 606–0623, U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 97–33877 Filed 12–29–97; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a New Information Collection: Form RI 25–51

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a new information collection. RI 25–51, Civil Service Retirement System (CSRS) Survivor Annuitant Express Pay Application for Death Benefits, will be used by the Civil Service Retirement System solely to pay benefits to the widow(er) of an annuitant. The application is intended for use in immediately authorizing payments to an annuitant's widow or widower, based on the report of death, when our records show the decedent elected to provide benefits for the applicant.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 22,000 RI 25–51 forms will be completed annually. We estimate it takes approximately 30 minutes to complete the form. The annual estimated burden is 11,000 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov

DATES: Comments on this proposal should be received by March 2, 1998.

ADDRESSES: Send or deliver comments to: Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Budget & Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 97–33878 Filed 12–29–97; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Revision of Information Collection: Form RI 20–63

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management will submit to the Office of Management and Budget a request for reclearance of the following information collection. RI 20–63, Survivor Annuity Election for a Spouse, is an enclosure covered by a letter explaining why OPM is sending the form and is used by the Civil Service Retirement System (CSRS) to provide information and a survivor benefits election opportunity to annuitants who have notified the CSRS that they have married.

There are estimated to be 2,400 respondents for RI 20–63 and 200 for the cover letter. It is estimated to take 45 minutes to complete the form with a burden of 1,800 hours and 10 minutes to complete the letter, which gives a burden of 34 hours. The total burden for RI 20–63 is 1,834 hours.

Comments are particularly invited on:

—whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and

—ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@mail.opm.gov

DATES: Comments on this proposal should be received by March 2, 1998.

ADDRESSES: Send or deliver comments to—Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415–0001.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Budget & Administrative Service Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 97–33880 Filed 12–29–97; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Revision of Information Collection: Forms RI 20–64 and RI 20–64A

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for revision of the following information collection. RI 20–64, Former Spouse Survivor Annuity Election, is used by the Civil Service Retirement System to provide information about the amount of annuity payable after a survivor reduction and obtain a survivor benefits election form from annuitants who are eligible to elect to provide survivor benefits for a former spouse. RI 20–64A, Information On Electing A Survivor Annuity For Your Former Spouse, is a pamphlet that provides important information to retirees under the Civil Service Retirement System who want to provide a survivor annuity for a former spouse.

Approximately 30 RI 20–64 forms are completed annually. Each form takes about 45 minutes to complete. The annual estimated burden is 23 hours. Comments are particularly invited on:

—whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and

—ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@mail.opm.gov.

DATES: Comments on this proposal should be received by March 2, 1998.

ADDRESSES: Send or deliver comments to—Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415–0001.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Budget & Administrative Service Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 97–33881 Filed 12–29–97; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised and Expiring Information Collection: Form RI 95–4

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–103, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of a revised & expiring information collection. RI 95–

4, Marital Information Required of Refund Applicants for Federal Employees Retirement System (FERS), is used by OPM to pay refunds of retirement contributions when the information is not included on the SF 3106, Application for Refund for Retirement Deductions (FERS). To pay these benefits, all applicants for refund must provide information to OPM about their marital status and whether any spouse(s) or former spouse(s) have been informed of the proposed refund.

Approximately 100 RI 95–4 forms will be completed annually. We estimate it takes approximately 30 minutes to complete the form. The annual burden is 50 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov

DATES: Comments on this proposal should be received by January 29, 1998.

ADDRESSES: Send or deliver comments to—

John C. Crawford, Chief, FERS Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3313, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Budget & Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 97–33879 Filed 12–29–97; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39467; File No. SR–CBOE–97–42]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change By the Chicago Board Options Exchange, Incorporated Relating to Proactive Disclosure of ''n'' Orders

December 19, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 25, 1997, the Chicago Board Options Exchange, Incorporated (''CBOE 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 CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Exchange Rule 7.5 (''Rule'') regarding disclosure obligations for ''n'' orders by adding Interpretation .04. An ''n'' order as defined in Rule 6.51 is an order for any account of a non-member market-maker or specialist relating to his assignment in a class of options listed for trading both at this Exchange and at the exchange of the market-maker or specialist. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and the Commission.

II. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to require a Floor Broker who holds a so-called ''n'' order to affirmatively disclose the status of the ''n'' order as such by public outcry at the post prior to representing the order in the trading crowd. An ''n'' order is defined in Rule 6.51 as an order for the account of a broker-dealer who is a non-member market-maker or specialist relating to his assignment in a class of options listed on CBOE and on another exchange. Disclosing the status of orders as ''n'' orders will make the trading crowd aware that the orders are broker-dealer orders and not public customer orders, so that they may be properly treated under CBOE Rules that give preferential treatment to non-broker-dealer public customer orders. For example, Rule 6.45 gives priority to non-broker-dealer public customer bids and offers in the customer limit order book over other bids and offers at the same price, and Rule 8.51 provides that a trading crowd's firm quote obligations apply to non-broker-dealer public customer orders only. Requiring the identification of ''n'' orders as broker-dealer orders should reduce the likelihood that such orders will be inadvertently treated as public customer orders, thereby assuring that actual public customer orders will receive the priorities to which they are entitled under the Rules.

By requiring the affirmative disclosure of a category of broker-dealer orders that might otherwise by mistakenly identified as orders of public customers, the proposed rule change will safeguard the priorities granted under CBOE Rules to the orders of non-broker-dealer public customers, thereby serving to promote just and equitable principles of trade and to protect investors and the public interest in furtherance of the objectives of Section 6(b)(5) of the Securities Exchange Act of 1934.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 he principal office of the CBOE. All submissions should refer to the file number in the caption above and should be submitted by January 20, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–33830 Filed 12–29–97; 8:45 am]

BILLING CODE 8010–01–M

[1] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39470; File No. SR–NASD–97–81]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 to the Proposed Rule Change, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Changes to the Rule 1010 Series, the Rule 8000 Series, and the Rule 9000 Series to Reflect Changes in the Corporate Organization of the National Association of Securities Dealers, Inc. and Its Subsidiaries

December 19, 1997.

On October 31, 1997, the National Association of Securities Dealers, Inc. (''NASD''), through its regulatory subsidiary NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')'),[1] and Rule 19b–4 thereunder.[2] In this filing, the NASD proposed amendments to (a) Article V of the NASD Regulation By-Laws; (b) the Rule 1010 Series; (c) the Rule 8000 Series; (d) the Rule 9000 Series; and (e) certain other Rules of the Association, generally to conform such rules to the corporate restructuring of the Association and to make clarifying and technical changes to such rules. Notice of this proposed rule filing was published in the **Federal Register** on December 3, 1997 (as amended, the ''Notice'').[3] The Commission did not receive any comment letters on the filing.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Introduction and Background

In November 1994, the NASD Board of Governors appointed the Select Committee on Structure and Governance (''Select Committee'') to review the NASD's corporate governance structure and to recommend changes to enable the NASD to better meet its regulatory and business obligations, including its oversight of the Nasdaq market. Following the recommendations of the Select Committee, the NASD proposed reorganizing its corporate structure. Nasdaq was given sole responsibility to operate and oversee the Nasdaq market and other over-the-counter (''OTC'') markets, while NASD Regulation was given responsibility for regulation and member and constituent services.[4] The NASD retained ultimate policymaking, oversight, and corporate authority as the parent holding company and statutory self-regulatory organization (''SRO''), while granting substantial deference to the operating Subsidiaries in the areas of their respective jurisdictions. These revisions to the corporate structure were first proposed and adopted in mid-1996.[5] Final revisions to the corporate structure were approved on November 14, 1997.[6]

On August 8, 1996, the Commission issued an order pursuant to Section 19(h)(1) of the Act (''SEC Order''), including fourteen undertakings (''Undertakings''),[7] and a related report pursuant to Section 21(a) of the Act (''21(a) Report'').[8] In these documents, the Commission indicated that the NASD had not complied with its own rules and had failed to satisfy its obligations under the Act to enforce such rules and the federal securities laws. In response to the Commission's findings in the 21(a) Report and to comply with the terms of certain undertakings, the NASD subsequently proposed amendments to its Rules of the Association.[9] These changes were approved by the Commission on August 7, 1997.[10] The proposed amendments supplement the changes contained in the Commission's August 1997 order.

II. Description of the Proposal

The Association's proposed rule amendments are intended to (A) conform the Rules of the Association to reflect the terms of the recent corporate reorganization of the NASD, NASD Regulation, and Nasdaq,[11] and (B) clarify and simplify certain portions of those Rules of the Association approved in SR–NASD–97–28.[12] The following outlines the proposed amendments.[13]

A. Conforming Amendments

The structural changes to the NASD and its Subsidiaries modified the sizes of the three governing boards, interwove

[3] See Securities Exchange Act Release No. 39350 (November 21, 1997), 62 FR 64000 (File No. SR–NASD–97–81). Amendment Nos. 1 and 2 to the proposed rule filing were filed on November 12, 1997 and November 18, 1997, respectively. The changes contained in these amendments were included in the Notice. See Letter from Joan C. Conley, Secretary, NASD Regulation to Katherine A. England, Assistant Director, Division of Market Regulation, Commission dated November 12, 1997 (note corrected sender); Letter Amendment No. 2 from Alden S. Adkins, Vice President and General Counsel, NASD Regulation to Katherine A. England, Assistant Director, Division of Market Regulation, Commission dated November 18, 1997. Several additional technical amendments were also included in the Notice. Telephone Conversation between Sharon Zackula, Office of General Counsel, NASD Regulation and Mandy S. Cohen, Office of Market Supervision, Commission (November 20, 1997). Amendment No. 3 to the proposed rule filing, which amended the requested effective date of the proposal and included several additional technical amendments (see discussion *infra* p. 9, fn. 20), was filed on December 12, 1997. Letter Amendment No. 3 from Alden S. Adkins, Vice President and General Counsel, NASD Regulation to Katherine A. England, Assistant Director, Division of Market Regulation, Commission dated December 12, 1997.

[4] NASD Regulation and Nasdaq are collectively referred to herein as the ''Subsidiaries.''

[5] See Securities Exchange Act Release No. 37106 (April 11, 1996), 61 FR 16944 (April 18, 1996) (File No. SR–NASD–96–02); Securities Exchange Act Release No. 37107 (April 11, 1996), 61 FR 16948 (April 18, 1996) (File No. SR–NASD–96–16).

[6] Securities Exchange Act Release No. 39326 (November 14, 1997), 62 FR 62385 (November 21, 1997) (File No. SR–NASD–97–71).

[7] Securities Exchange Act Release No. 37538 (Aug. 8, 1996) (SEC Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, *In the Matter of National Association of Securities Dealers, Inc.*, Administrative Proceeding File No. 3–9056).

[8] Report and Appendix to Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and The Nasdaq Stock Market (Aug. 8, 1996).

[9] Securities Exchange Act Release No. 38545 (April 24, 1997) 62 FR 25226 (May 8, 1997) (File No. SR–NASD–97–28), as amended.

[10] Securities Exchange Act Release No. 38908 (August 7, 1997), 62 FR 43385 (August 13, 1997) (Rules of the Association).

[11] See Release No. 34–39326 (File No. SR–NASD–97–71).

[12] See Release No. 34–28908.

[13] A complete list of all changes is contained in the Notice, see *supra* Release No. 34–39350.

the membership of such boards and included significant non-industry and public participation throughout the Association's decision making processes. Corresponding changes to the procedures described in the Rules of the Association are required to effect these changes operationally. For example, since all of the members of the Subsidiary governing boards (the NASD Regulation or Nasdaq ''Directors'') now sit on the NASD Board of Governors, review by both a subsidiary board and the parent board is duplicative. The change in the corporate structure contemplated removal of the subsidiary layer of review, and the proposed amendments effect that change through appropriate regulation.[14]

In addition, the corporate restructuring created an adjudication review committee separate from the NASD Regulation Board of Directors. The revised by-laws substituted the new National Adjudicatory Council (the ''NAC,'' a non-board committee) for the National Business Conduct Committee (the ''NBCC,'' composed of NASD Regulation Directors). The proposed amendments replace references to the NBCC with references to the NAC. In addition, the amendments transfer certain responsibilities formerly delegated to the NBCC chair and vice chair, to a new Review Subcommittee of the NAC. The composition and quorum requirements of this subcommittee are set forth in a proposed amendment to Article V of the NASD Regulation By-Laws. Upon approval of the proposed amendments, the Review Subcommittee will have delegated authority to make decisions regarding (a) the administration of disciplinary proceedings during the review and appeal process; (b) the review and acceptance of letters of acceptance, waiver, and consent; (c) the review and acceptance of minor rule plan violation letters; and (d) the review and acceptance of offers of settlement. The corresponding authority of the chair and vice chair to make such determinations will be deleted.

B. Clarifying and Simplifying Amendments

In addition to the conforming amendments described above, the Association is also proposing several clarifying and/or simplifying changes to some of the Rules of the Association approved in SR–NASD–97–28. These changes will (a) allow members to maintain an electronic version of the NASD Manual as their required copy of this manual; (b) consolidate several rules addressing provision of information within one Rule series; (c) clarify the delegated responsibilities of NASD Regulation's Departments of Enforcement and Market Regulation; (d) allow appointment of persons to serve as observers to disciplinary proceedings; and (e) correct certain minor procedural inconsistencies and/or uncertainties regarding notice, notice periods, service, stays, and exemptions. The particulars of these changes are set forth in detail in the Notice.

III. Discussion

A. The Proposed Amendments

As discussed below, the Commission has determined at this time to approve the NASD's proposal. The standard by which the Commission must evaluate a proposed rule change is set forth in Section 19(b) of the Act. The Commission must approve a proposed NASD rule change if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that govern the NASD.[15] In evaluating a given proposal, the Commission examines the record before it and all relevant factors and necessary information. In addition, Section 15A of the Act establishes specific standards for NASD rules against which the Commission must measure the NASD Proposal.[16]

The Commission has evaluated the NASD's proposed rule change in light of the standards and objectives set forth in the Act (particularly Sections 15A [17] and 3(f) [18]), the SEC Order, the 21(a) Report as well as the revised corporate restructuring approved in SR–NASD–97–71. The Commission believes that the proposed changes to the Rules of the Association are consistent with the corporate restructuring, as well as the objectives of the Act, the Undertakings and the 21(a) Report. The proposed rule change, in furthering the purpose of the corporate restructuring by appropriate conforming regulation, should encourage dispassionate performance of the NASD's responsibilities as an SRO.

As set forth in the proposal, the conforming changes will allow the Governors of the NASD Board and the Directors of the Subsidiary boards to direct their attention to crucial governance matters, and will decrease unnecessary duplicative procedures. For example, creation of the NAC and its Review Subcommittee will reduce the administrative burden on board members by eliminating their required service on these bodies, while at the same time protecting the integrity of the review process. Council members, who are nominated in a manner similar to the Governors, selected by the NASD Regulation Board, and subject to the same compositional requirements as the NASD Regulation Board, should be able to perform their important adjudicatory functions without other governance distractions. Elimination of the duplicative subsidiary board review of certain committee decisions will similarly reduce the administrative burden on those Governors who also serve as Subsidiary Directors, without sacrificing their input into the review process.

The clarifying and simplifying modifications will further enhance the Association's ability to perform its self-regulatory function. Permitting use of an electronic NASD manual should lessen the cost and time involved in the maintenance of an up-to-date manual and increase the availability of the regulations therein. Gathering the rules requiring certain persons to provide information to the Association into one Rule series should help its members and other persons to be more aware of these related information sharing obligations, and thereby ease compliance with such rules. Clarifying the respective duties of the Departments of Enforcement and Market Regulation should help these offices to properly identify and perform their appropriate delegated responsibilities. Allowing qualified observers to sit on disciplinary panels should provide an effective training forum for future panelists. Finally, correction of the various inconsistencies and/or uncertainties discovered after approval of the Rules of the Association in SR–NASD–97–28 should help to promote the smooth and just application

[14] While the present rules include two levels of review, an aggrieved party does not have two rights of appeal. Review by the governing boards, referred to as a ''call for review'' is at the sole discretion of each board.

[15] U.S.C. 78s(b).

[16] 15 U.S.C. 78*o*–3.

[17] For example, Section 15A(b)(8) requires that the rules of an association provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership, the barring of any person becoming associated with a member thereof, and for the prohibition or limitation by the association of any person with respect to access to services offered by the association. Section 15A(h)(2) requires a registered securities association when determining whether a person shall be denied membership, barred from becoming associated with a member, or prohibited or limited with respect to access to services offered by the association or member thereof, to notify such person of and give him an opportunity to be heard upon, the specific grounds for denial, bar, or prohibition or limitation under consideration and keep a record. Section 15A(h)(3) governs when a registered securities association may summarily suspend a member or a person associated with a member.

[18] In approving this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

of such rules, and contribute to and enhance the Association's ability to perform its SRO responsibilities in an objective, balanced and responsive manner.

B. Effectiveness of the Amendments

The Association has requested expedited approval of its proposal, with an effective date of not later than the day prior to the January 1998 meeting of the NASD Regulation Board. Immediate approval, with delayed application will allow publication of the revised Rules of the Association, while allowing the NASD's constituency and the general public time to become familiar with the changes to such rules prior to their implementation. The Association has submitted a related rule filing, SR–NASD–97–90, which conforms the effective dates of its corporate governance documents to the same date.[19] The Commission agrees that expedited approval and a delayed effective date are appropriate for the reasons stated, as well as to ensure that the NASD's constituency and the general public will have adequate time to review the new procedures prior to their implementation.

IV. Amendment No. 3

The Commission finds good cause for approving Amendment No. 3 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Specifically, Amendment No. 3 amends the requested effective date of the proposal, as discussed above, and makes several technical amendments of the same type contained in the Notice.[20] The Commission believes that these changes, combined with those in the initial filing of SR–NASD–97–81 are consistent with the Act, and should enhance both the fair and efficient operation of the NASD and the dispassionate application of the rules and fairness in the NASD's adjudicatory and listing processes, as well as other regulatory activities. Finally, the acceleration of the effectiveness of Amendment No. 3 will enable the Commission to approve its changes at the same time as the other modifications to the NASD Rules of the Association proposed in the Notice. Therefore, the Commission believes that granting accelerated approval to Amendment No. 3 is appropriate and consistent with Section 19(b)(2) of the Act.[21]

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3 to the proposed rule change. 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 Amendment No. 3 that are filed with the Commission, and all written communications relating to Amendment No. 3 between the Commission and any persons, 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–97–81 and should be submitted by January 20, 1998.

VI. Conclusion

The Commission believes that the proposed rule change is consistent with the Act, and, particularly, with Sections 15A(b) (6), (7), and (8) thereof.[22] The proposed rule change is consistent with Section 15A(b)(6) of the Act in that it will promote just and equitable principles of trade by providing fair procedures and standards for membership admission, and fair procedures and consistent treatment for requesting information from members or other persons who are obligated to provide the Association with information. The proposed rule change is consistent with Section 15A(b)(7) in that it furthers the statutory mandate that the Association establish rules providing that its members and persons associated with its members shall be appropriately disciplined for violation of any provision of this title, the rules or regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or the Rules of the Association, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from association with a member, or any other fitting sanction. The rule change is consistent with Section 15A(b)(8) in that it furthers the statutory goals of providing a fair procedure for disciplining members and persons associated with members, fair procedures for admitting or denying membership to any person seeking membership to the Association, fair procedures for barring any person from becoming associated with a member of the Association, and fair procedures for prohibiting or limiting the association of any person with respect to access to services offered by the Association or a member thereof.

The Commission also finds good cause for approving the NASD's proposal prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Specifically, the changes contained in this rule filing conform the Rules of the Association to the recently revised corporate governance documents of the NASD, NASD Regulation and Nasdaq.[23] The Commission believes that accelerating the effectiveness of the proposal will enable the NASD to complete conformance of its Rules of the Association to the recent corporate restructuring prior to the first Board of Governors meeting implementing the new corporate structure. Thus, the Commission believes that granting accelerated approval to SR–NASD–97–81 is appropriate and consistent with Section 19(b)(2) of the Act.[24]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (SR–NASD–97–81), including Amendment No. 3 thereto, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

[19] The corporate governance documents, which include the enacting provisions for the NAC (in the NASD Regulation By-Laws) were approved by the Commission on November 14, 1997. See Release No. 34–39326.

[20] The technical amendments: (A) amend paragraphs (d)(1), (e), (f), and (g) of Rule IM–8310–2, *Release of Disciplinary Information*, by (i) deleting the current terms, ''National Business Conduct Committee'' and ''NBCC,'' and substituting the term ''National Adjudicatory Council;'' (ii) deleting an erroneous reference to the discretionary review by the NASD Regulation Board; and (iii) replacing erroneous references to two rescinded Rules with reference to the two current Rules; (B) delete an erroneous reference to the Rule 9800 Series in Rule 9110; (C) change an erroneous singular reference in Rule 9270(d)(1)(C) to a plural reference; (D) delete erroneous references to (i) the discretionary review by the NASD Regulation Board, and (ii) Rule 9352, in Rule 9311(b); (E) delete an erroneous reference to a paragraph previously proposed for deletion in Rule 9351(b)(2); (F) change an erroneous singular reference to a plural reference in Rule 9414(b)(1); and (G) change the caption of paragraph (a) in Rule 9610.

[21] 15 U.S.C. 78s(b)(2).

[22] 15 U.S.C. 78*o*–3.

[23] In SR–NASD–97–71, the Association requested an effective date for that portion of the NASD Regulation By-Laws creating the NAC of not later than the first meeting of the NASD Board in January 1998, which is one day later than the requested date for this rule filing. See Release No. 34–39326. The Association recently filed an amendment to the effective date of the By-Laws creating the NAC, to conform to the effective date contained in this Order. See SR–NASD–97–90.

[24] 15 U.S.C. 78s(b)(2).

[25] *Id.*

[26] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–33831 Filed 12–29–97; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice No. 2652]

Office of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to section 36(c) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each letter.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State, (703) 875–6644.

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to section 36(c) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: November 17, 1997.

William J. Lowell,

Director, Office of Defense Trade Controls.

[FR Doc. 97–33806 Filed 12–29–97; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice 2670]

Delegation of Authority

By virtue of the authority vested in me by the laws of the United States, including the Foreign Assistance Act of 1961, the Arms Export Control Act, and the State Department Basic Authorities Act of 1956, and the memorandum delegation signed by the President on November 4, I hereby delegate to John Holum, during any period in which he serves both in the Office of the Under Secretary of State for Arms Control and International Security Affairs and as Director of the Arms Control and Disarmament Agency, all authorities vested in the Secretary of State (including all authorities delegated by the President to the Secretary of State by any act, order, determination, delegation of authority, regulation or executive order heretofore or hereinafter enacted or issued) that have been or may be delegated or redelegated to the Under Secretary of State for Arms Control and International Security Affairs.

This memorandum shall be published in the **Federal Register.**

Dated: December 15, 1997.

Madeleine Albright,

Secretary of State.

[FR Doc. 97–33805 Filed 12–29–97; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements filed during the week of December 19, 1997

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–97–3243
Date Filed: December 16, 1997
Parties: Members of the International Air Transport Association
Subject:
PTC3 0138 dated December 12, 1997 r1
PTC3 0140 dated December 12, 1997 r2
PTC3 0144 dated December 12, 1997 r3
PTC3 0147 dated December 12, 1997 r4
PTC3 Resolutions (involving US Territories)
Intended effective date: January 15, 1998

Docket Number: OST–97–3244
Date Filed: December 16, 1997
Parties: Members of the International Air Transport Association
Subject:
PTC3 0136 dated December 12, 1997 r1
PTC3 0137 dated December 12, 1997 r2–3
PTC3 0139 dated December 12, 1997 r4–5
PTC3 0141 dated December 12, 1997 r6
PTC3 0142 dated December 12, 1997 r7–8
PTC3 0143 dated December 12, 1997 r9
PTC3 0145 dated December 12, 1997 r10–12
PTC3 0146 dated December 12, 1997 r13–23
PTC3 0148 dated December 12, 1997 r24
PTC3 0149 dated December 12, 1997 r25
PTC3 Resolutions (except US Territories)
Intended effective date: January 15, 1998

Docket Number: OST–97–3265
Date Filed: December 18, 1997
Parties: Members of the International Air Transport Association
Subject:
PTC EUR–J/K 0019 dated November 21, 1997
Europe-Japan/Korea Resos r1–47
Minutes—PTC23 EUR–J/K 0022 dated December 16, 1997 Tables—PTC23 EUR–J/K Fares 0007 dated November 21, 1997
Intended effective date: April 1, 1998

Docket Number: OST–97–3264
Date Filed: December 18, 1997
Parties: Members of the International Air Transport Association
Subject:
PAC/Reso/396 dated December 12, 1997
Finally Adopted Resolutions
Minutes—PAC/Meet/150 dated December 10, 1997
r–1–814 r–4–820d r–7–854
r–2–814e r–5–824r
r–3–814ff r–6–850
Intended effective date: February 1, 1998

Docket Number: OST–97–3263
Date Filed: December 18, 1997
Parties: Members of the International Air Transport Association
Subject:
Comp Telex Mail Vote 900
Fares from Canada (Excluding the US/UST)
Amendments to Mail Vote 900
Intended effective date: January 5, 1998

Docket Number: OST–97–3262
Date Filed: December 18, 1997
Parties: Members of the International Air Transport Association
Subject:
PTC12 NMS–ME 0032 dated December 16, 1997
North Atlantic-Mideast Expedited Resos
r1–5 r–1–02h r–3–070g r–5–090p
r–2–008z r–4–073m
Intended effective date: February 1, 1998

Paulette V. Twine,

Documentary Services.

[FR Doc. 97–33904 Filed 12–29–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Application for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending December 19, 1997

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–97–3270.

Date Filed: December 19, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 16, 1998.

Description: Application of WestJet Express Airlines, Inc., pursuant to 49 U.S.C., 41102 and Subpart Q of the Regulations, request a certificate of public convenience and necessity authorizing WestJet to engage in interstate charter air transportation of person, property and mail. WestJet also requests that this application be processed through the use of expedited non-hearing procedures, and that if possible, the Department proceed directly to a Final Order in this matter.

Docket Number: OST–97–3273.

Date Filed: December 19, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 16, 1998

Description: Application of Continental Airlines, Inc., pursuant to 49 U.S.C. 41108, 41102 and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing Continental to provide scheduled foreign air transportation of persons, property and mail between Houston, Texas and Sao Paulo, Rio de Janeiro, Belo Horizonte, Brasilia, Curitiba and Porto Alegre, Brazil, and to combine this authority with Continental's other exemption and certificate authority consistent with applicable international agreements. Continental also asks for an allocation of the seven U.S.-Brazil combination frequencies which become available October 1, 1998, pursuant to the U.S.-Brazil Memorandum of Consultations signed November 18, 1997.

Paulette V. Twine,

Documentary Services.

[FR Doc. 97–33903 Filed 12–29–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–97–3268]

Panoz Auto Development Company; Receipt of Application for Second Renewal of Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

Panoz Auto Development Company of Hoschton, GA., has applied for a second renewal of its exemption from paragraph S4.1.4 of Federal Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection*. The basis of the reapplication is that compliance will cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.

This notice of receipt of an application for renewal is published in accordance with the requirements of 49 U.S.C. 30113(b)(2) and does not represent any judgment of the agency on the merits of the application.

Panoz received NHTSA Exemption No. 93–5 from S4.1.4 of Standard No. 208, an exemption for two years which was initially scheduled to expire August 1, 1995 (58 FR 43007). It applied for, and received, a renewal of this exemption for an additional two years, scheduled to expire on November 1, 1997 (61 FR 2866). On August 28, 1997, NHTSA received Panoz's application for second renewal, which was more than 60 days before the scheduled expiration date of its exemption. In accordance with 49 CFR 555.8(e), Panoz's filing of its application before the 60th day stays the expiration until the Administrator grants or denies the application for second renewal.

Panoz's original exemption was granted pursuant to the representation that its Roadster would be equipped with a Ford-supplied driver and passenger airbag system, and would comply with Standard No. 208 by April 5, 1995 after estimated expenditures of $472,000. As of April 1993, the company had expended 750 man hours and $15,000 on the project.

According to its 1995 application for renewal,

> Panoz has continued the process of researching and developing the installation of a driver and passenger side airbag system on the Roadster since the original exemption petition was submitted to NHTSA on April 5, 1993. To date, an estimated 1680 man-hours and approximately $50,400 have been spent on this project.

At that time, Panoz used a 5.0L Ford Mustang GT engine and five speed manual transmission in its car. Because ''the 1995 model year and associated emission components were revised by Ford'', this caused

> a delay in the implementation of the airbag system on the Roadster due to further research and development time requirements and expenditure of additional monies to evaluate the effects of these changes on the airbag adaptation program.

Shortly before filing its application for first renewal, Panoz learned that Ford was replacing the 5.0L engine and emission control system on the 1996 Mustang and other passenger cars with a modular 4.6L engine and associated emission components. The 1995 system did not meet 1996 On-Board Diagnostic emission control requirements, and Panoz was faced with using the 1996 engine and emission control system as a substitute. The majority of the money and man hours at that time had been spent on adapting an airbag system to the 5.0L engine car, and the applicant had to concentrate on adapting it to a 4.6L engine car. Panoz listed eight types of modifications and testing necessary for compliance that would cost it $337,000 if compliance were required at the end of a one-year period. It asked for and received a two-year renewal of its exemption.

However, Panoz found integration of the 4.6L engine into its existing chassis more difficult than anticipated, primarily because the 4.6L was 10 inches wider than the engine it replaced. This required a total redesign of the chassis, requiring expenditure of ''a significant amount of resources.'' Simultaneously, it designed the vehicle to allow for the integration of the Ford Mustang driver-side and passenger-side airbag systems. Panoz describes these steps in some detail and estimates that between May 1995 and August 1997 it spent 2200 man-hours and $66,000 on these efforts. In the same time period, it spent $47,000 in static and dynamic crash testing of a 4.6L car related to airbag system development. Panoz concludes by describing the additional modifications and testing required to adapt the Ford system to its car. These costs total $358,000. A two-year renewal of its exemption would provide sufficient time to generate sufficient income (approximately $15,000 a month through sales of vehicles and private

funding) to fund the modifications and testing.

Panoz sold 13 cars in 1993 and 13 more in 1994. It did not state its sales in 1995. Because of the effort needed to meet Federal emission and safety requirements, Panoz did not build any 1996 model year vehicles. It reports sales of 23 model year 1997 vehicles in the 12 months preceding its application for second renewal. At the time of its original petition, Panoz's cumulative net losses since incorporation in 1989 were $1,265,176. It lost an additional $249,478 in 1993, $169,713 in 1994, $721,282 in 1995, and $1,349,241 in 1996.

The applicant reiterated its original arguments that an exemption would be in the public interest and consistent with the objectives of traffic safety. Specifically, the Roadster is built in the United States and uses 100 percent U.S. components, bought from Ford and approximately 80 other companies. It provides employment for 45 full time and three part time employees. The Roadster is said to provide the public with a classic alternative to current production vehicles. It is the only vehicle that incorporates ''molded aluminum body panels for the entire car'', a process which continues to be evaluated by other manufacturers and which ''results in the reduction of overall vehicle weight, improved fuel efficiency, shortened tooling lead times, and increased body strength.'' With the exception of S4.1.4 of Standard No. 208, the Roadster meets all other Federal motor vehicle safety standards including the 1997 side impact provisions of Standard No. 214.

Interested persons are invited to submit comments on the application described above. Comments should refer to the docket number and the notice number, and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the application will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 29, 1998.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on December 23, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–33954 Filed 12–29–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA), DOT

[Docket No. RSPA–97–3224; Notice 10]

Pipeline Safety: Intent To Approve Shell Pipe Line Corporation for the Pipeline Risk Management Demonstration Program

AGENCY: Office of Pipeline Safety, DOT.

ACTION: Notice.

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) plans to approve Shell Pipe Line Corporation (SPLC) as a participant in the Pipeline Risk Management Demonstration Program. OPS believes the SPLC demonstration project will provide superior safety by applying numerous risk control measures which exceed regulatory requirements, including increased right-of-way surveillance; smart pig inspections; close interval cathodic protection surveys; enhanced communications with One-Call, excavators, and the public; additional overpressure protection; and selected depth-of-cover surveys. This notice explains OPS's rationale for approving this project, and summarizes the demonstration project provisions (including affected locations, risk control and monitoring activities, and regulatory exemptions) that would go into effect once OPS issues an order approving SPLC as a Demonstration Program participant. OPS seeks public comment on the proposed demonstration project so that it may consider and address these comments before approving the project. The SPLC demonstration project is the first of several projects OPS plans to approve and monitor in assessing risk management as a component of the Federal pipeline safety regulatory program.

ADDRESSES: OPS requests that comments to this notice be submitted on or before February 4, 1998, so they can be considered before project approval. However, comments on this or any other demonstration project will be accepted in the Docket throughout the 4-year demonstration period. Comments should be sent to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001, or you can E-Mail your comments to ops.comments@rspa.dot.gov. Comments should identify the docket number RSPA–97–3224. Persons should submit the original comment document and one (1) copy. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard. The Dockets Facility is located on the plaza level of the Nassif Building in Room 401, 400 Seventh Street, SW, Washington, DC. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Elizabeth Callsen, OPS, (202) 366–4572, regarding the subject matter of this notice. Contact the Dockets Unit, (202) 366–5046, for docket material.

SUPPLEMENTARY INFORMATION:

1. Background

The Office of Pipeline Safety (OPS) is the federal regulatory body overseeing pipeline safety. As a critical component of its mandate, OPS administers and enforces a broad range of regulations governing safety of pipelines and environmental protection. These regulations have contributed to a good pipeline industry safety record by ensuring that risks associated with pipeline design, construction, operations, and maintenance are understood, managed, and reduced.

Preserving and improving this safety record is OPS's top priority. On the basis of extensive research, and the experience of both government and industry, OPS believes that a risk management approach, properly implemented and monitored through a formal risk management regulatory framework, offers opportunities to achieve:

(1) Superior safety and environmental protection;

(2) Increased efficiency and service reliability of pipeline operations; and

(3) Improved communication and dialogue among industry, the government, and other stakeholders.

A key benefit of this approach is the opportunity for greater levels of public participation.

As authorized by Congress, OPS is conducting a structured Demonstration Program to evaluate the use of a comprehensive risk management approach in the operations and regulation of interstate pipeline facilities. This evaluation will be performed under strictly controlled conditions through a set of demonstration projects to be conducted

with interstate pipeline operators. While OPS may exempt a participating operator from particular regulations if the operator needs such flexibility in implementing a comprehensive risk management project, regulatory exemption is neither a goal nor requirement of the Demonstration Program.

2. OPS Evaluation of SPLC Demonstration Project Proposal

Using the consultative process described in Appendix A of the Requests for Application for the Pipeline Risk Management Demonstration Program (62 FR 14719), published on March 27, 1997, OPS is prepared to finalize the agreement with Shell Pipe Line Corporation (SPLC) on the provisions for a demonstration project SPLC will conduct on two pipeline segments it operates. The consultative review process ensures that OPS considers and addresses comments on the SPLC proposal from all stakeholders and interested parties.

Several means have been used to provide information on the proposed project and solicit questions and concerns. These include: (1) Previous notices in the **Federal Register** (62 FR 40136 (July 25, 1997) and 62 FR 53052 (October 10, 1997)); (2) an Internet Information System (PRIMIS) available via the OPS Home Page; (3) broadcasts via the Federal Emergency Management Agency's (FEMA) Emergency Education Network (EENET) (OPS received over 2,000 ''hits'' on the website broadcast featuring SPLC); (4) a prospectus and map that OPS and SPLC produced and mailed to over 400 people, including representatives from Local Emergency Planning Committees (LEPC) along affected pipeline routes; and (5) a November 19, 1997, public meeting OPS hosted in Houston, TX.

OPS has also solicited comment on the SPLC proposal from other federal agencies (including the Department of Justice and, via the Regional Response Teams, the Environmental Protection Agency), state and local government officials, public interest groups, and industry and community representatives.

This notice is the last public comment opportunity prior to approval of SPLC's demonstration project. OPS will address and resolve any issues and concerns raised through the consultative process with SPLC.

Company History and Record

SPLC is a wholly owned subsidiary of Shell Oil Products Company, employing over 700 people, and operating approximately 8,000 miles of pipelines in 18 states. Originally incorporated in 1919 (as the Ozark Pipe Line Corporation), SPLC today transports approximately 4.0 million barrels of crude oil, refined products, petrochemicals, carbon dioxide, and natural gas daily.

SPLC is headquartered in Houston, Texas. SPLC's parent corporation, Shell Oil Products Company, is currently seeking government approval to merge its refining, transportation, and marketing operations with Texaco and Saudi Refining Inc. The merger will affect SPLC, although the details are not yet known. In its Order approving SPLC's demonstration project, OPS would require that the merged company demonstrate that it will continue to commit to the objectives of the Demonstration Program, and to comply with the requirements of the Order.

Before entering into consultations with SPLC, OPS determined that SPLC was a favorable candidate for the Program, based on an examination of the company's safety and environmental compliance record, its accident history, and its commitment to working with OPS to develop a project meeting the Demonstration Program goals. Neither of the two pipeline segments SPLC is proposing for its demonstration project has experienced a release due to unsafe operation (Section 4 of this document describes the demonstration sites and the releases in the demonstration segments).

However, in December, 1988, another pipeline operated by SPLC spilled 20,554 barrels of crude oil into the Gasconade River near Vienna, Missouri. The cause of the spill was a manufacturing defect; the consequences were aggravated by SPLC's failure to quickly stop the pipeline flow. The subsequent OPS investigation of the spill found no violations by SPLC of the pipeline safety regulations. Following this spill, SPLC undertook a company-wide risk assessment and risk reduction effort resulting in improved employee training, new or more aggressive approaches to in-line inspection (smart pigging), hydrotesting, hydraulic surge and spill volume analysis, and installation of additional mainline block valves. Lessons learned from the December 1988, release and the subsequent company-wide assessments form the foundation for SPLC's proposed risk management demonstration project.

With regard to employee safety, from among some fifteen other candidates, SPLC was selected as the American Petroleum Institute (API) ''Safest Major Pipeline Operator'' in 1990, 1993, 1994, and 1995, and was in second place in 1992 and 1996.

Consultative Evaluation

During the consultations, representatives from OPS headquarters and Southwest Region, pipeline safety officials from Texas, Louisiana, and Colorado, and risk management experts, met with SPLC to discuss SPLC's risk assessment, supporting analyses, proposed risk control activities, performance measures, and means of administering risk management within the company. The discussions addressed technical validation of all proposed activities, demographics and terrain along affected pipelines, communications with outside stakeholders, and monitoring and auditing of results once the demonstration project is underway. The demonstration project provisions described in this notice evolved from these consultations, as well as from any public comments received to date. Once OPS and SPLC consider and address comments received on this notice, OPS plans to issue an Order approving the SPLC demonstration project.

3. Statement of Project Goals

OPS and SPLC believe SPLC's demonstration project will improve safety through the application of numerous risk control measures that exceed regulatory requirements on both pipeline segments, particularly in the area of third party damage prevention. Increased right-of-way surveillance; smart pig inspections; close interval cathodic protection surveys; enhanced communications with One-Call, excavators, and the public; additional overpressure protection; and selected depth-of-cover surveys are some of the more significant activities that will be added to existing measures to improve safety.

SPLC is proposing that segments of two pipeline systems (the Texas-Louisiana System and the Cortez System) comprise its demonstration project. SPLC conducted a thorough and systematic risk assessment to identify hazards and risks associated with operating both of the pipeline segments. SPLC then identified various activities that are intended to result in reduced risk and superior safety and reliability on both pipeline segments.

SPLC's risk assessment process relies heavily on the expertise of people familiar with the operation, maintenance, construction, and history of the pipeline. With an average length of service of over 25 years, several of the people who participated in SPLC's risk assessments have worked on the

proposed demonstration segments since the segments were constructed. The risk assessments confirmed expectations, outlined previously in SPLC's Letter of Intent, that third-party damage (i.e., contractors, landowners, or others who accidentally strike pipelines during excavation and/or other activities) is the most significant risk posed to either pipeline segment. Therefore, SPLC's highest priority for its risk management demonstration project is to prevent this type of damage.

For the Texas-Louisiana System, SPLC will supplement the required activities it now performs with numerous new and additional risk control activities based on SPLC's comprehensive risk assessment. SPLC seeks no regulatory exemption on the Texas-Louisiana system. SPLC makes a strong case that the risk of a release on this system will be reduced, and superior safety will result. Releases from the Texas-Louisiana System pose little, if any, risk to the environment due to the volatile nature of the commodity transported (ethylene).

For the Cortez System, SPLC has also identified new and additional risk control activities and has performed several technical validations supporting a pressure increase beyond present regulatory limits at an existing pump station in Cortez, CO. SPLC's assessment shows that a combination of risk control activities, coupled with installation of redundant overpressure protection systems, will offset any increase in risk from the pressure increase that the company is requesting for the Cortez segment. With the flexibility to raise pressure above regulatory limits, SPLC can increase throughput (the amount of commodity transported) without having to construct an intermediate pump station in Blanco, NM. The Cortez System transports carbon dioxide (CO_2), which is a naturally occurring component of the air and presents no environmental hazard. The regulatory exemption would apply to a 25-mile segment of the pipeline located in a rural and sparsely populated area in Colorado.

For both pipeline segments, SPLC will improve emergency preparedness through increased discussions with and the sharing of the results of dispersion modeling with local emergency responders.

4. Demonstration Project Pipeline Segments

The Texas-Louisiana System

SPLC's 250-mile Texas-Louisiana Ethylene Pipeline System (the Texas-Louisiana System) transports chemical-grade ethylene between Shell Oil Product's Deer Park, TX, manufacturing complex and its Napoleonville, LA, transfer facility. SPLC's customers use ethylene for manufacturing plastics, detergents, antifreeze, and other consumer products. Ethylene is a flammable, highly volatile liquid that becomes a slightly lighter-than-air gas when released to the atmosphere. Under certain conditions, it could form an explosive vapor cloud until diluted or dispersed. SPLC proposes to include 205 miles of this system—from its Mont Belvieu, TX, compressor station to a block valve at the western edge of the Atchafalaya Basin east of New Iberia, LA—in its risk management demonstration project. Although routed mostly through rural areas, the line passes near five large industrial and developing residential areas, and includes more than 40 road crossings and 12 water crossings. Due to its volatile nature, ethylene is not considered a water pollutant.

The Texas-Louisiana line has experienced 2 reportable releases since it was commissioned in 1979, both the result of third party damage. These two releases resulted in no fatalities or injuries, although a fire and explosion did occur during the latter of these releases (1981). There was no fire or explosion associated with the first release (1979). The total volume of ethylene released to the atmosphere in these two events was the equivalent of approximately 14,000 barrels of liquid. Neither event affected the environment. There have been six minor, unreportable releases totalling the equivalent of approximately 220 barrels of liquid, caused by miscellaneous mechanical failures. Four additional ''near miss'' events of third party damage to the pipeline system (one in the past few months) have also occurred, none of which resulted in a release.

The Cortez System

The 502-mile Cortez carbon dioxide (CO_2) Pipeline System (the Cortez System) carries naturally-occurring commercial-grade CO2 from Cortez, CO, across New Mexico to Denver City, TX. CO_2 is injected into oil wells to aid in the production of crude oil. CO_2 is a nonflammable, inert, non-toxic liquid that, when released to the atmosphere, becomes a heavier-than-air gas. Although CO_2 is a naturally occurring component of air and presents no environmental hazard, at high concentrations in confined, low lying areas, it can present an asphyxiation hazard until it is dispersed or diluted. The operating pressures on this line presently range from 2147 pounds per square inch gauge (psig) to 2999 psig. These pressures are high compared to pipelines in general, but are typical for pipelines transporting CO_2.

SPLC proposes to include the northwestern half of the Cortez System (roughly 260 miles), from the Cortez pump station to the inlet of its pressure-reducing station at Edgewood, NM (east of Albuquerque). The line traverses rolling hills, mountainous areas, and sandy soils, passing near five small communities. The route crosses four major rivers and about 15 major roads. The segment of the Cortez line in the demonstration project is located mostly in sparsely populated, rural areas.

The Cortez line has experienced no releases since it was commissioned in 1984. There have been four ''near miss'' events of third-party damage to the pipeline system. OPS databases have no records of any releases from CO_2 pipelines that have resulted in injury or death.

Neither demonstration segment is likely to impact the environment.

5. Project Description

The following risk control and monitoring activities would be included in the Order OPS issues formally approving the SPLC demonstration project.

Risk Control Activities

The company proposes using inspection techniques on both demonstration pipelines to determine if there has been any past, unknown damage while simultaneously applying a combination of risk control activities and risk communications to reduce the likelihood and the consequences of future third-party damage. In addition, the company believes that several of these risk control activities will help prevent third party damage on its newly constructed propylene pipeline, which runs parallel to parts of the Texas-Louisiana line. The activities proposed by SPLC to address damage from outside parties go beyond the minimum requirements in the existing Federal Pipeline Safety Regulations.

SPLC has committed to:

- Increasing scheduled air patrol of the lines from every two weeks to weekly;
- Improving air patrol effectiveness through enhanced staff training, including techniques for more immediate reporting and evaluation of potential instances of third party encroachment to responsible SPLC personnel in the vicinity;
- Adding traffic barriers to aboveground equipment near roadways

to reduce the likelihood of vehicle accidents impacting the pipeline;

- Reviewing locations of and supplementing where appropriate existing right-of-way markers that identify the presence of a pipeline, including adding Global Positioning System (GPS) locating information on markers;
- Increasing ground surveillance of the lines in densely populated areas;
- Enhancing company sponsorship of the local One-Call system (the system in which excavators provide notification of their intent to dig so that underground utilities like pipelines can be located and protected prior to digging);
- Significantly upgrading public/neighbor education and awareness efforts (including media usage);
- Conducting community-based emergency planning, training, and drills, so that both the company and local officials will be better prepared in the event of an accident;
- Using a warning ''mesh'' for backfilling during new construction or significant repairs (excavators digging near a line would encounter this mesh before hitting the pipe);
- Running in-line inspection device(s) on the Texas-Louisiana demonstration segment to determine if there is any existing mechanical damage to the pipeline from prior third party encroachments; and
- Assessing other risk control measures and staffing requirements.

SPLC will also perform dispersion analyses for the Texas-Louisiana ethylene demonstration segment to better understand the potential consequences of a release, and thus help improve emergency response planning and communications with local responders.

Increased Throughput on the Cortez System

With implementation of the above activities to control the causes of the most significant risks to both of the demonstration segments, SPLC believes it can then proceed with a plan to increase the Cortez System's throughput (the amount of product transported) while still delivering superior safety. This plan calls for increasing the maximum operating pressure by up to 11 percent beyond what is allowed by the regulations on the 25-miles of pipeline immediately downstream of the Cortez pump station. In the Order authorizing SPLC to commence its demonstration project, OPS will exempt SPLC from 49 CFR 195.406(a)(1–3), which addresses the maximum operating pressure for pipelines transporting hazardous liquids.

To support its evaluation of risk associated with increased operating pressure on the Cortez line, SPLC conducted several technical analyses. These include:

- A comprehensive review of the original pipe specifications; actual materials' properties; pipemill manufacture, inspection, and testing procedures; and field construction and inspection techniques that demonstrated the pipe's safety margin exceeds regulatory requirements, and thus can safely handle the proposed increase in operating pressure;
- Steady state transthermal hydraulic analysis and computer modeling to determine the actual pressure and corresponding safety factors at any point in the pipeline under normal and worst case operating conditions;
- Surge analyses and modeling to determine the pressure at any point in the pipeline under abnormal or unexpected operating events; and
- Dispersion analyses to better understand the potential consequences of a release, and thus help improve emergency response planning and communications with local responders.

Additional Risk Control Activities on the Cortez Line

In addition, prior to any increase in operating pressure on the Cortez segment (expected to occur in August–September, 1998), SPLC's plan also calls for:

- Conducting a Close Interval Survey, which involves inspection and electrical testing every two to three feet along the pipeline to confirm the ability of protection systems to mitigate corrosion, and to help detect if there is any coating damage that might indicate the presence of mechanical damage to the pipeline from possible prior third party encroachments.
- Performing a Depth-of-Cover Survey (from the Cortez Station to the 25-mile mark) to ensure adequate protection from external mechanical damage and loading.
- Developing a Geographic Information System (GIS) Data Base (from the Cortez Station to the 25-mile mark) to test its applicability and usefulness for pipeline operations, including emergency response.
- Installing additional equipment at the Cortez Station beyond that currently required by the regulations to provide four levels of redundant protection against overpressure situations. This will provide additional assurance that the pressures in the pipe will not exceed the safe levels determined from the system review noted above.
- Doubling the inspection frequency from once per year to every six months for the overpressure protection devices mentioned above.

Monitoring Demonstration Project Effectiveness

The SPLC Demonstration Project includes a comprehensive approach to performance monitoring that assures the superior protection of public safety, and achieves other project objectives. A key element of this monitoring plan is a set of performance measures that would track the growth and institutionalization of risk management within the company, measure the effectiveness of SPLC's risk control activities, validate analyses supporting current safety activities, and provide a basis for future improvement. Examples include: The number of SPLC-operated pipeline systems under risk management (should increase if risk management is feasible); the number of unmonitored encroachments on the pipeline right-of-way (should decrease due to improved communications); accuracy of One-Call reports (should improve due to improved pipeline markers); employee awareness of risk management process (should improve through training and participation in process); quantity/accessibility of data to support risk assessment (should improve as performance measure data accumulates). SPLC will report performance measure data and project progress regularly to OPS throughout the four year demonstration period. This information, as well as periodic OPS audits, will assure accountability for improved performance.

6. Regulatory Perspective

Why OPS Plans To Approve This Project

OPS is considering SPLC's proposed project for the Demonstration Program because, after extensive review, OPS is satisfied that the proposal:

A. Provides superior safety for both of the demonstration segments. For the Cortez line, OPS is satisfied that the safety margin in the pipe can accommodate the proposed increase in pressure without adding significant additional risk to the public. Furthermore, SPLC has adequately demonstrated that the combination of third party damage and other risk control activities described earlier more than offset any increase in risk associated with the higher operating pressure in the first 25-miles of the line. For the Texas-Louisiana ethylene line, all of the proposed risk control activities go beyond the current regulatory

requirements and thus provide a higher level of public protection than exists today.

B. Offers a good opportunity to evaluate risk management as a component of the Federal pipeline safety regulatory program. OPS believes the Demonstration Program could benefit from SPLC's participation, given some of the distinguishing features of its proposed demonstration project, including:

- Comprehensive evaluation of two distinctly different pipeline systems transporting different products, in different locations with substantially different surroundings, representing significantly different risks;
- Emphasis on improving damage prevention and emergency response coordination;
- Concentrated public outreach and risk communications efforts;
- A good illustration (on the Texas-Louisiana line) of how companies can use risk management to improve safety without seeking to reduce costs incurred by existing regulations;
- Willingness to share information with OPS and state pipeline safety agencies on the specific risks associated with the demonstration line segments, as well as its risk management program and processes (which is far more information than is typically provided in the existing compliance process). This additional information allows OPS to more effectively ensure safe operation, as well as helps OPS understand how risk management might be employed to supplement the existing regulatory framework; and
- Systematic allocation of resources to potentially higher-risk operations.

How Will OPS Oversee This Project?

OPS retains its full authority to administer and enforce all regulations governing pipeline safety. Except for the increase in maximum operating pressure over the initial 25-mile segment of the Cortez line, SPLC is not requesting any regulatory relief or exemptions. Both of these lines will be subject to routine OPS inspection to ensure compliance with the applicable Federal Pipeline Safety Regulations. In addition, subsequent to approval, the Demonstration Project will be monitored by a Project Review Team (PRT) consisting of OPS headquarters and regional staff and state pipeline safety officials. The PRT is designed to be a more comprehensive oversight process, which draws maximum technical experience and perspective from all affected OPS regional and headquarters offices as well as any affected state agencies that would not normally provide oversight on interstate transmission projects. One of the primary functions of this Team will be to conduct periodic risk management audits, which will be performed in addition to the normal OPS inspections. These risk management audits will be used to ensure company compliance with the specific terms and conditions of the OPS Order authorizing this Demonstration Project. OPS is developing a detailed audit plan, tailored to the unique requirements of the SPLC Demonstration Project. This plan will describe the audit process (e.g., types of inspections, methods, and their frequency), as well as the specific requirements for reporting information and performance measure data to OPS.

Information Provided to the Public

OPS has previously provided information to the public about the SPLC project, and has requested public comment, using many different sources. OPS aired two electronic ''town meetings'' (June 5, 1997, and September 17, 1997) enabling viewers of the two-way live broadcasts to pose questions and voice concerns about candidate companies (including SPLC). Two earlier **Federal Register** notices (62 FR 40135; July 25, 1997 and 62 FR 53052; October 10, 1997) informed the public that SPLC was interested in participating in the Demonstration Program, provided general information about technical issues and risk control alternatives to be explored, and identified the geographic areas the demonstration project would traverse.

Since August, OPS has used an Internet-accessible data system called the Pipeline Risk Management Information System (PRIMIS) at http://www.cycla.com/opsdemo to collect, update, and exchange information about all demonstration candidates, including SPLC.

At a November 19, 1997, public meeting OPS hosted in Houston, TX, SPLC officials presented a summary of the proposed demonstration project and answered questions from meeting attendees. (Portions of this meeting were broadcast on December 4, 1997. This broadcast is available on demand via our OPS website ops.dot.gov/tmvid.htm.)

OPS has provided a prospectus, which includes a map of the demonstration sites, to State officials and community representatives who may be interested in reviewing project information, providing input, or monitoring the progress of the project. This notice is the last public comment opportunity prior to approval of SPLC's demonstration project.

Issued in Washington, DC on December 23, 1997.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 97–33863 Filed 12–29–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33529]

City of Charlotte, North Carolina—Acquisition Exemption—

Certain Assets of the North Carolina Railroad Company

The City of Charlotte, NC (the City), a noncarrier, has filed a verified notice of exemption under 49 CFR Part 1150, Subpart D—*Exempt Transactions* to acquire from the North Carolina Railroad Company (NCRR) certain physical assets of an approximately 1.1-mile line of railroad (the Line) located between 2nd Street and 12th Street in Charlotte, Mecklenburg County, NC.[1] The City will purchase the Line from NCRR for the purpose of constructing and operating a passenger rail transit system. The City is acquiring the Line subject to a preexisting lease between NCRR and Norfolk Southern Railway Company (NS)[2], whereby NS will provide all common carrier service on the Line. NCRR will retain an exclusive freight operating easement sufficient to accommodate both NS's continuing common carrier obligation and NCRR's own residual common carrier obligation. Consummation of the transaction is expected on or after December 18, 1997, the effective date of the exemption.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. A petition to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. An original and 10 copies of all pleadings, referring to Finance Docket No. 33529, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1925 K Street, N.W., Washington, DC 20423–

[1] The City simultaneously filed a motion to dismiss the notice of exemption. The Board will address the jurisdictional issue raised by the motion to dismiss in a subsequent decision.

[2] The lease was executed in 1895 by NCRR and Southern Railway Company (NS's predecessor). See *Norfolk Southern Railway Company and Atlantic and East Carolina Railroad Company—Lease and Operation Exemption—North Carolina Railroad Company*, Finance Docket No. 32820 (ICC served Dec. 22, 1995).

0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, N.W., Suite 400, Washington, DC 20036–6105.

Decided: December 18, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–33856 Filed 12–29–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33528]

Effingham Railroad Company, Operation Exemption—Line Owned by Total Quality Warehouse

Effingham Railroad Company (ERRC), a Class III rail carrier,[1] has filed a verified notice of exemption under 49 CFR 1150.31 to operate over approximately 9,201 feet of railroad line that will be constructed for and acquired by Total Quality Warehouse (TQW), located in an industrial park in Effingham, IL,[2] connecting TQW's facility with the Illinois Central Railroad Company.

Construction of the track is expected to begin in January 1998, and ERRC will begin operations under agreement with TQW, as soon as construction is completed.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time.[3] The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33528, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John M. Robinson, 9616 Old Spring Road, Kensington, MD 20895.

Decided: December 19, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–33857 Filed 12–29–97; 8:45 am]

BILLING CODE 4915–00–P

[1] ERRC became a carrier pursuant to a notice of exemption in *Effingham Railroad Company—Operation Exemption—Line Owned by Agracel Corporation,* STB Finance Docket No. 33468 (STB served Oct. 22, 1997), when it became the operator of approximately 206.05 feet of track, owned by the Agracel Corporation, which connects with a Consolidated Rail Corporation line and serves a facility in the Effingham industrial park.

[2] ERRC states that it will also operate an additional 400 feet of track, within the industrial park, connecting its existing line of railroad with TQW's facility, as a side track, exempt from regulation pursuant to 49 U.S.C. 10906.

[3] On December 9, 1997, Joseph C. Szabo, on behalf of United Transportation Union-Illinois Legislative Board, filed a petition to stay the operation of the notice of exemption, as well as to reject the notice or to revoke the exemption. By decision served December 16, 1997, the petition for stay was denied. A subsequent decision will be issued by the Board on the request to reject or to revoke the exemption.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33516]

Illinois Railnet, Inc.; Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company

Illinois Railnet, Inc. (IR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from The Burlington Northern and Santa Fe Railway Company (BNSF) and to operate approximately 56.67 miles of rail line between milepost 40.73, near Montgomery, and milepost 97.40, at Streator, in Kendall and LaSalle Counties, IL. In addition, IR will acquire for a 99-year period incidental overhead trackage rights from BNSF between milepost 40.73, near Montgomery, and milepost 33.4, near Eola, including operations over tracks 1, 2, and 3 in the Sheep Yard near milepost 40.0, in the vicinity of Montgomery and over all tracks in the Eola rail yard.[1]

The earliest the transaction could be consummated was December 9, 1997, the effective date of the exemption (7 days after the exemption was filed).

This transaction is related to STB Finance Docket No. 33517, *North American Railnet, Inc.—Continuance in Control Exemption—Illinois Railnet, Inc.,* wherein North American Railnet, Inc. has concurrently filed a verified notice to continue in control of IR upon its becoming a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33516, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, Rea, Cross & Auchincloss, 1920 N Street, N.W., Suite 420, Washington, DC 20036.

Decided: December 16, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–33858 Filed 12–29–97; 8:45 am]

BILLING CODE 4915–00–P

[1] On December 11, 1997, a petition to stay operation of the exemption filed by IR was filed by Joseph C. Szabo, on behalf of United Transportation Union-Illinois Legislative Board. The petition for stay was denied by the Board in *Illinois Railnet, Inc.—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company,* STB Finance Docket No. 33516 (STB served Dec. 16, 1997).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33517]

North American Railnet, Inc.; Continuance in Control Exemption—Illinois Railnet, Inc.

North American Railnet, Inc. (Railnet) has filed a notice of exemption to continue in control of the Illinois Railnet, Inc. (IR), upon IR's becoming a Class III railroad.

The earliest the transaction could be consummated was December 9, 1997, the effective date of the exemption (7 days after the exemption was filed).

This transaction is related to STB Finance Docket No. 33516, *Illinois Railnet, Inc.—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway,* wherein IR seeks to acquire and operate a rail line from The Burlington Northern and Santa Fe Railway.

Applicant controls one existing Class III railroad: Nebraska, Kansas, & Colorado Railnet, Inc., operating in the States of Kansas, Nebraska, and Colorado.

Applicant states that: (i) The rail lines to be operated by IR do not connect with any railroad in the corporate family; (ii) the transaction is not part of a series of anticipated transactions that would connect IR's lines with any railroad in the corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33517, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, Rea, Cross & Auchincloss, 1920 N Street, N.W., Suite 420, Washington, DC 20036.

Decided: December 16, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–33859 Filed 12–29–97; 8:45 am]

BILLING CODE 4915–00–P

UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

Provo River Restoration Project

AGENCIES: The Utah Reclamation Mitigation and Conservation Commission (Commission) and the Department of the Interior (Department).

ACTION: Notice of availability of the Final Environmental Impact Statement (FEIS).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Commission and the Department have jointly issued a Final Environmental Impact Statement (FEIS) for the Provo River Restoration Project (PRRP). The FEIS analyzes alternatives and impacts associated with measures to restore and improve the fish habitat, riparian habitat, and natural functioning of the Provo River between Jordanelle Dam and Deer Creek Reservoir, Wasatch County, Utah. These measures are required to fulfill commitments of the 1988 Aquatic Mitigation Plan for the Strawberry Aqueduct and Collection System (SACS) and the 1987 Wildlife Mitigation Plan for the Bonneville Unit of CUP as partial mitigation for past impacts of the CUP to this and other reaches of the Provo River and to other streams within the Bonneville Unit area. The Central Utah Project Completion Act (CUPCA) also authorizes the Commission and the Department to apply additional fish habitat and riparian habitat rehabilitation benefits and recreational facilities on the Provo River as mitigation for the Provo River Project, a duly authorized Reclamation project prior to CUP. The Provo River Restoration Project plan presents three action alternatives which meet, to a greater or lesser degree depending on the alternative selected, the Commission's habitat restoration and improvement mitigation and conservation responsibilities associated with the Provo River corridor in Heber Valley.

DATES: Written comments on the FEIS must be submitted or postmarked no later than February 6, 1997.

ADDRESSES: Comments on the FEIS should be addressed to: Michael C. Weland, Executive Director, Utah Reclamation Mitigation and Conservation Commission, 102 West 500 South, Suite 315, Salt Lake City, Utah 84101.

SUPPLEMENTARY INFORMATION: Public participation has occurred throughout the EIS process. A Notice of Intent was filed in the **Federal Register** in December 1992. A notice of availability of the Draft Environmental Impact Statement was published in the **Federal Register** June 13, 1996. Since that time, open houses, public meetings, and mail-outs have been conducted to solicit comments and ideas. Any comments received throughout the process have been considered.

FOR FURTHER INFORMATION: Additional copies of the FEIS, DEIS, copies of the resources technical reports, or information on matters related to this notice can be obtained on request from: Michael C. Weland, Executive Director, Utah Reclamation Mitigation and Conservation Commission, 102 West 500 South, Suite 315, Salt Lake City, Utah 84101, Telephone: (801) 524–3146, Fax: (801) 524–3148.

Copies are also available for inspection at:

Utah Reclamation Mitigation and Conservation Commission, 102 West 500 South, Suite 315, Salt Lake City, Utah 84101

Department of the Interior, Natural Resource Library, Serials Branch, 18th and C Streets, NW, Washington, D.C. 20240

Department of the Interior, Central Utah Project Completion Act Office, 302 East 1860 South, Provo, Utah 84606

Dated: December 23, 1997.

Michael C. Weland,

Executive Director, Utah Reclamation Mitigation and Conservation Commission.

[FR Doc. 97–33853 Filed 12–29–97; 8:45 am]

BILLING CODE 4310–05–P

federal register

Tuesday
December 30, 1997

Part II

Securities and Exchange Commission

17 CFR Parts 200 et al.

Brokers and Dealers Reporting Requirements; Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 240, 249

[Release No. 34–39454; File No. S7–30–97]

RIN 3235–AH16

OTC Derivatives Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is publishing for comment proposed rules and rule amendments under the Securities Exchange Act of 1934 that would tailor capital, margin, and other broker-dealer regulatory requirements to a class of registered dealers, called OTC derivatives dealers, active in over-the-counter derivatives markets. The proposed regulations for OTC derivatives dealers are intended to allow securities firms to establish dealer affiliates that would be able to compete more effectively against banks and foreign dealers in global over-the-counter markets. Registration as an OTC derivatives dealer under the proposed rules would be an alternative to registration as a fully regulated broker-dealer, and would be available only to entities acting primarily as counterparties in privately negotiated over-the-counter derivatives transactions.

DATES: Comments should be submitted on or before March 2, 1998.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Mail Stop 6–9, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments may also be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–30–97. This file number should be included on the subject line if E-mail is used. Comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Comment letters that are submitted electronically will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT:

General: Catherine McGuire, Chief Counsel, Glenn J. Jessee, Special Counsel, or Patrice Gliniecki, Special Counsel, at (202) 942–0073, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 7–11, Washington, D.C. 20549.

Financial Responsibility and Books and Records: Michael Macchiaroli, Associate Director, at (202) 942–0132, Peter R. Geraghty, Assistant Director, at (202) 942–0177, Thomas K. McGowan, Special Counsel, at (202) 942–4886, Louis Randazzo, Special Counsel, at (202) 942–0191, Marc Hertzberg, Attorney, at (202) 942–0146, Christopher Salter, Attorney, at (202) 942–0148, Matt Hughey, Accountant, at (202) 942–0143, or Gary Gregson, Statistician, at (202) 942–4156, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 2–2, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is publishing for comment proposed Rules 3b–12, 3b–13, 3b–14, 3b–15, 3b–16, 15a–1, 15b9–2, 15c3–4, 17a–12, 36a1–1, and 36a1–2 [1] under the Securities Exchange Act of 1934 (''Exchange Act'').[2] The Commission also proposes to amend Rule 30–3 [3] and Exchange Act Rules 8c–1, 15b1–1, 15c2–1, 15c3–1, 15c3–3, 17a–3, 17a–4, and 17a–11,[4] and to revise Form X–17A–5 (FOCUS report).[5]

I. Introduction

Privately negotiated, over-the-counter (''OTC'') derivatives transactions involving large institutions have come to occupy a prominent place in global finance. The International Swaps and Derivatives Association (''ISDA'') estimates that, as of December 31, 1996, the combined notional amount of globally outstanding interest rate swaps, currency swaps, and interest rate options has grown to $25.4 trillion.[6] This market has reached this size in a relatively short period of time. In fact, the first major swap transaction was effected between IBM and the World Bank only 16 years ago.[7]

Whether OTC derivatives transactions are structured as interest rate swaps, foreign currency swaps, equity swaps, basis swaps, total return swaps, credit derivatives, or options, they share certain characteristics.[8] For example, each has a value or return related to the value or return of an underlying asset. Asset classes can consist of securities or virtually any other financial instrument, financial measure, or physical commodity, such as interest rates, securities indices, foreign currencies, metals or petroleum, or spreads between the values of different assets. More importantly, each of these products can provide their users with a carefully tailored method for managing a variety of risks.[9]

Relying on developments in financial engineering, dealers and end-users can identify and isolate different kinds and degrees of risk present in their portfolios and not only evaluate these risks, but design derivative instruments to specifically address them. Some OTC derivatives transactions, for example, are structured to address market risk—the risk that the value of the underlying asset, rate, or index will suffer an adverse change in value. Others are designed to address asset volatility. Still others, based on two or more assets, may address risks posed by changes in the values of the assets relative to one another. This is particularly true in the case of foreign currency swaps, but may also apply where correlations exist between the performance of different assets. Recently, the financial industry has developed credit derivatives that address the risks associated with the default by, or a decline in the rating of, a particular issuer of debt or other securities.

As new products are developed as a result of dealer creativity and in response to the needs of end-users,

[1] 17 CFR 240.3b–12, 240.3b–13, 240.3b–14, 240.3b–15, 240.3b–16, 240.15a–1, 240.15b9–2, 240.15c3–4, 240.17a–12, 240.36a1–1, and 240.36a1–2.

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 200.30–3.

[4] 17 CFR 240.8c–1, 240.15b1–1, 240.15c2–1, 240.15c3–1, 240.15c3–3, 240.17a–3, 240.17a–4, and 240.17a–11.

[5] 17 CFR 249.617.

[6] ''ISDA Market Survey,'' ISDA Internet web site (http://www.isda.org).

[7] See Peter A. Abken, Beyond Plain Vanilla: A Taxonomy of Swaps, Financial Derivatives Reader (Robert W. Kolb, ed.) (1992) at 265.

[8] Swaps are contracts that typically allow the parties to the contract to exchange cash flows related to the value or performance of certain assets, rates, or indexes for a specified period of time. See generally Peter A. Abken, Beyond Plain Vanilla: A Taxonomy of Swaps, Financial Derivatives Reader (Robert W. Kolb, ed.) (1992). Most swaps are based on currencies or interest rates. Swaps that provide for an exchange of values based on the value or performance of equity securities make up a small, but growing, share of the swaps market. Options are instruments that generally provide the holder, in exchange for the payment of a premium, with benefits of favorable movements in the underlying asset or index with limited or no exposure to losses from unfavorable price movements. Typically, OTC options provide for cash settlement, rather than the delivery of the underlying asset, rate, or index. Credit derivatives function like options to the extent payments under the contract are made in the event of a credit event, such as a decline in an issuer's credit rating or default in performance under a debt obligation.

[9] See, e.g., Clifford W. Smith, Jr., Charles W. Smithson, and D. Sykes Wilford, Managing Financial Risk, Financial Derivatives Reader (Robert W. Kolb, ed.) (1992); Group of Thirty, Derivatives: Practices and Principles (July 1993); Financial Derivatives: Actions Needed to Protect the Financial System, United States General Accounting Office Report (May 1994).

some of these products may cross regulatory boundaries. OTC options on equity securities or on U.S. government securities, for example, are securities within the definition set forth in Section 3(a)(10) of the Securities Exchange Act of 1934 (''Exchange Act'').[10] Firms that effect transactions in these or other securities OTC derivative products are required to register as broker-dealers under Section 15(b) of the Exchange Act[11] and become subject to all of the regulations applicable to other securities brokers-dealers, including Exchange Act rules governing margin and capital. Firms that effect transactions only in non-securities OTC derivative products are not subject to U.S. broker-dealer regulation. In addition, because banks are excluded from the Exchange Act definitions of ''broker'' and ''dealer,''[12] they may engage in a broad range of securities and non-securities OTC derivatives activities consistent with guidance issued by their applicable bank regulators.[13]

The potential costs of broker-dealer regulation, as applied to OTC derivatives dealers, have affected the way U.S. securities firms conduct business in OTC derivatives markets. In many instances, U.S. firms have decided to locate segments of their OTC derivatives business in foreign financial centers. The manner in which business relationships between dealers and their counterparties are structured has also played a role in the development of offshore locations for OTC derivatives business.

For example, in order to reduce credit exposure to a single counterparty, dealers in OTC derivatives markets enter into master agreements with their counterparties that provide for netting of the outstanding financial obligations existing between the dealers and their counterparties. It makes sense, therefore, for dealers to seek to conduct both securities and non-securities OTC derivatives transactions with any counterparty through a single legal entity. To the extent a non-bank dealer's transactions include securities OTC derivative products, the federal securities laws would require this single legal entity to be a U.S. registered broker-dealer. Capital and margin requirements applicable to registered broker-dealers, however, impose substantial costs on the operation of an OTC derivatives business and make it difficult for U.S. securities firms to compete effectively with banks and foreign dealers in OTC derivatives markets.[14]

While there may be other reasons for U.S. securities firms to conduct business from foreign financial centers, U.S. securities firms should not be compelled to move business activities outside of the United States solely to address competitive disadvantages that result from Commission regulation. Accordingly, the Commission proposes to establish a form of limited broker-dealer regulation that would give U.S. securities firms an opportunity to conduct business in a vehicle subject to modified regulation appropriate to OTC derivatives markets.

This proposed structure is optional and is designed to allow U.S. securities firms to establish separate entities capable of acting as counterparties with respect to both securities and non-securities OTC derivative products. Capital, margin, and various other requirements would be tailored to the activities of these entities. These tailored requirements are intended, in part, to improve the efficiency and competitiveness of U.S. securities firms active in global OTC derivatives markets. These improvements should benefit participants in OTC derivatives markets. OTC derivatives dealers would remain subject to other rules applicable to fully regulated broker-dealers.

Registration as an OTC derivatives dealer would be an alternative to registration as a fully regulated broker-dealer under Section 15(b) of the Exchange Act, and would be available only to entities acting primarily as counterparties in privately negotiated OTC derivatives transactions. OTC derivatives dealers would also be allowed to engage in certain categories of securities activities related to conducting an OTC derivatives business. For example, OTC derivatives dealers would be able to enter into transactions for risk management purposes and to take possession of or sell counterparty collateral. They would also be permitted to issue securities, including warrants on securities, hybrid securities products, and structured notes.[15]

The Commission is concerned, however, that OTC derivatives dealers not take advantage of the modified regulatory requirements under the limited regulatory structure to engage in a significant degree of activity better suited to full broker-dealer regulation. Accordingly, the Commission proposes that OTC derivatives dealers be allowed to engage only in the securities activities described in the proposed rules, and that all securities transactions, including securities OTC derivative transactions, be effected through a fully regulated broker-dealer.

II. Description of the Proposed Rules and Rule Amendments

A. Definitions

As further detailed below, the proposed rules define five new terms: (1) OTC derivatives dealer; (2) eligible OTC derivative instrument; (3) permissible derivatives counterparty; (4) permissible risk management, arbitrage, and trading transaction; and (5) hybrid security.

1. Proposed Rule 3b–12; Definition of OTC Derivatives Dealer

The proposed definition of OTC derivatives dealer is intended to encompass those dealers that are primarily engaged in acting as counterparty in OTC derivatives transactions. The Commission recognizes, however, that it would be appropriate to permit entities that elect to become subject to the limited regulatory system also to conduct limited securities activities in

[10] 15 U.S.C. 78c(a)(10).

[11] See 15 U.S.C. 78o(b).

[12] This bank exclusion from the Exchange Act definitions of ''broker'' and ''dealer'' is available only to those banking institutions that satisfy the definition of ''bank'' set forth in Section 3(a)(6) of the Exchange Act [15 U.S.C. § 78c(a)(6)].

[13] Bank regulators have issued guidance to banks engaging in derivatives activities. See, e.g., Risk Management of Financial Derivatives, OCC Banking Circular No. 277 (Oct. 1993); OCC Bulletin 94–31, Questions and Answers For BC–277 (May 1994); OCC Bulletin 96–43, Credit Derivatives (Aug. 1996); OCC Bulletin 96–25, Fiduciary Risk Management of Derivatives and Mortgage-backed Securities (Apr. 1996).

[14] The Commission's current net capital rule [17 CFR 240.15c3–1] imposes substantial capital charges in connection with conducting an OTC derivatives business. For example, under the net capital rule, broker-dealers holding interest rate swaps must calculate two potential capital charges for each swap. First, the net capital rule considers any net interest payment due to be an unsecured receivable, subject to a 100% capital charge in computing net capital. Second, a broker-dealer must also take a deduction, or haircut, on the notional amount of the swap. The size of the haircut depends on whether the firm has offset the swap. Current margin requirements also make it difficult for registered broker-dealers to conduct an OTC derivatives business. Under Section 7 of the Exchange Act [15 U.S.C. 78g] and Regulation T [12 CFR 220.1], broker-dealers are prohibited from extending credit on securities other than margin securities. In general, this means that registered broker-dealers cannot extend credit in securities OTC derivatives transactions on terms as favorable as those offered by other dealers.

[15] ''Hybrid securities'' are securities products that typically incorporate payment features that are economically similar to options, forwards, futures, or swaps involving currencies, interest rates, commodities, securities, or indices (or any combination, permutation, or derivative of these underlying assets). The proposed definition of ''hybrid security'' is discussed in Section II.A.4. below. Structured notes are notes that, like other OTC derivative products, provide for a return that is based on the value or return of an underlying asset.

connection with their OTC derivatives business. Accordingly, proposed Rule 3b–12 would define OTC derivatives dealer to mean any dealer that limits its securities activities to (1) engaging as a counterparty in transactions in eligible OTC derivative instruments (as defined in proposed Rule 3b–13) with permissible derivatives counterparties (as defined in proposed Rule 3b–14);[16] (2) issuing and reacquiring issued securities through a fully regulated broker or dealer; or (3) engaging in other securities transactions which the Commission designates by order, and in connection with any of these activities, engaging in permissible risk management, arbitrage, and trading transactions (as defined in proposed Rule 3b–15)[17]

Typically, U.S. firms that engage in securities derivatives activities are required to register as broker-dealers under Section 15(b) of the Exchange Act[18] and become subject to all of the regulations that apply to other fully regulated broker-dealers. Registration as an OTC derivatives dealer would be an alternative to full broker-dealer registration and would afford securities firms an opportunity to elect to conduct their activities in a vehicle subject to modified regulation. OTC derivatives dealers would also be permitted to engage in any non-securities activity, subject to appropriate capital treatment, as further discussed below.

2. Proposed Rule 3b–13; Definition of Eligible OTC Derivative Instrument.

Proposed Rule 3b–13 sets forth various criteria for determining whether a particular OTC derivative instrument is part of the class of instruments in which an OTC derivatives dealer would be eligible to act as counterparty. As defined in the proposed rule, these instruments would include any agreement, contract, or transaction that is not part of a fungible class of agreements, contracts, or transactions that are standardized as to their material economic terms and that are not entered into and traded on an exchange or other similar type of facility. These instruments would be based, in whole or in part, on the value of, any interest in, any quantitative measure of, or the occurrence of any event relating to, one or more securities, commodities, currencies, interest or other rates, indices, or other assets, or involve certain long-dated forward contracts, specifically contracts to purchase or sell a security on a firm basis at least one year following the transaction date. These criteria, the Commission believes, set reasonable standards that reflect that participants in the OTC derivatives market are primarily institutions that engage in privately negotiated transactions based, in part, on an assessment of a counterparty's credit and its ability to perform under the terms of a transaction.

The types of instruments that would generally satisfy the criteria set forth in proposed Rule 3b–13 would include interest rate swaps, currency swaps, equity swaps, swaps involving physical commodities (such as metals or petroleum), OTC options on equities (including equity indices), OTC options on U.S. government securities, OTC debt options (including options on debt indices), options on physical commodities, long-dated forwards on securities, and forwards relating to other types of assets. This list, however, is not intended to be an exclusive list, and OTC derivatives dealers would be permitted to act as counterparty in any instrument that meets the requirements of the proposed rule. As noted above, although OTC derivatives dealers would be primarily engaged in transactions involving eligible OTC derivative instruments, under the proposed regulatory system, they would also be permitted to engage in a limited range of other activities. These are discussed in Section II.A.4. below.

3. Proposed Rule 3b–14; Definition of Permissible Derivatives Counterparty

Proposed Rule 3b–14 defines those entities with which OTC derivatives dealers would be permitted to act as counterparties. As noted above, one goal underlying the proposal to create a limited system of broker-dealer regulation is to accommodate an institutional business that, in many instances, is being conducted offshore and to make it feasible for U.S. securities firms to combine securities and non-securities OTC derivatives activities in one entity. Persons who would be considered to be permissible derivatives counterparties in transactions with OTC derivatives dealers would be the same persons who currently are eligible to effect transactions with swaps dealers under the Commodity Future Trading Commission's swaps exemption set forth at 17 CFR Part 35.[19] Such persons generally would include banks; investment companies; commodity pools with total assets exceeding $5 million; corporations, partnerships, proprietorships, organizations, trusts, or other entities that have total assets exceeding $10 million, or that have net worth exceeding $1 million and are entering into transactions in connection with the conduct of their business; employee benefit plans subject to the Employee Retirement Income Security Act of 1974 with total assets exceeding $5 million; governmental entities; broker-dealers; futures commission merchants; and natural persons having total assets exceeding $10 million.

The Commission is also considering whether to include an additional class of permissible derivatives counterparty, specifically natural persons having at least $5 million in total assets who enter into OTC derivatives transactions to hedge existing or anticipated assets or liabilities. Persons in this class may include, for example, persons who acquire significant holdings of equity securities as a result of starting or operating a business or who own securities with a very low basis for tax purposes, but do not want to sell their holdings at the present time. These persons would be able to reduce the risk associated with being heavily invested in one type of security and diversify their market exposure by entering into a swap or cash-settled option without selling their holdings. The Commission specifically solicits comments on whether to broaden the definition of permissible derivatives counterparty to include this class of natural persons, or other categories of institutional investors, and encourages persons who have entered into OTC derivatives transactions to comment on the risks and benefits these transactions may

[16] Transactions by an OTC derivatives dealer that involve securities OTC derivative instruments must be effected through a fully regulated broker-dealer. See infra Section II.C., discussing proposed Rule 15a–1.

[17] The Commission expects that the rules being proposed today would be used by firms that are engaged primarily in the business of engaging in transactions in eligible OTC derivative instruments with permissible derivatives counterparties. As discussed in this release, one purpose of the limited regulatory structure for OTC derivatives dealers is to make it possible for U.S. securities firms to better compete in OTC derivatives markets with banks and foreign dealers. As discussed in Section II.A.4. below, OTC derivatives dealers would be permitted to engage in certain other securities activities that are closely related to conducting an OTC derivatives business. The regulatory structure for OTC derivatives dealers is not intended to allow securities firms to move substantial securities activity out of fully regulated broker-dealers into OTC derivatives dealers in order to take advantage of the modified capital and margin requirements applicable to these entities. OTC derivatives dealers would also be prohibited from accepting or holding customer funds or securities, or acting as a ''dealer'' in securities. See infra note 24.

[18] 15 U.S.C. 78o(b).

[19] Part 35 exempts certain swap agreements from most provisions of the Commodity Exchange Act [7 U.S.C. 1 *et seq.*], provided that the transaction is conducted solely between ''eligible swap participants,'' as defined in Part 35. The Commission believes that the proposed definition of ''permissible derivatives counterparty,'' generally describes participants active in OTC derivatives markets, but requests comment on this point.

present. The Commission is also interested in commenters' views whether factors other than total assets should be considered in determining which persons should be included in the definition.

4. Proposed Rules 3b–15 and 3b–16; Definition of Permissible Risk Management, Arbitrage, and Trading Transaction; Definition of Hybrid Security

Proposed Rule 3b–15 would permit an OTC derivatives dealer to engage in a limited range of securities activities, described under the rule as risk management, arbitrage, and trading transactions, in connection with the dealer's business as a counterparty in eligible OTC derivative instruments and as an issuer of securities. As discussed above, the focus of the regulatory system for OTC derivatives dealers is on providing a regulatory vehicle that would allow securities firms to establish separate entities through which to operate an OTC derivatives business. This necessarily includes the ability of OTC derivatives dealers to take possession of and sell counterparty collateral, to invest short-term cash balances, to manage risks associated with their OTC derivatives positions or their issuance of securities, and to engage in limited financing and arbitrage transactions.

The Commission recognizes the commercial interests that drive financial enterprises and the desire to maximize revenues. The Commission, however, is also concerned that securities firms not be able to move dealer activity in cash market instruments, such as stocks and bonds, that is currently conducted through a fully regulated broker-dealer into an OTC derivatives dealer. One reason is that OTC derivatives dealers should not be provided with an unfair regulatory advantage over fully regulated broker-dealers due to the availability of modified capital and margin requirements. A second reason is the Commission's view that entities that engage in comprehensive dealer activity should be subject to full broker-dealer regulation, including the Commission's existing capital and margin requirements, and be subject to supervision by a securities self-regulatory organization (''SRO''). In this instance, the Commission believes it is possible to satisfy the commercial interests of derivatives dealers in a manner consistent with sound regulatory policy, and proposes to permit OTC derivatives dealers to engage in a limited range of securities activities.[20]

Under the proposed rule, OTC derivatives dealers would be permitted to take possession of and sell counterparty collateral and invest short-term cash balances. It is expected, however, that any securities trading activity associated with short-term cash management by OTC derivatives dealers would involve relatively small cash balances and would not involve over-capitalizing these dealers solely for the purpose of moving government securities or other trading books into an OTC derivatives dealer from a fully regulated broker-dealer.

OTC derivatives dealers would also be permitted to manage risks associated with their OTC derivatives positions. The nature of risk management activity, however, makes it difficult to determine whether particular transactions satisfy this requirement. It is no longer possible, in many instances, to show the relationship between a hedging transaction and the instrument it is intended to hedge. Instead, all of the risks in a dealer's portfolio of OTC derivative positions are aggregated and managed on a daily basis. As a result, it may be difficult to demonstrate the relationship between trading done for risk management and the different OTC derivatives positions on a dealer's books.[21] It may also be difficult to distinguish between trading done for risk management purposes and other trading activity conducted by a derivatives dealer. Therefore, OTC derivatives dealers should develop reasonable procedures for ensuring compliance with the restrictions set forth in the proposed rules and for demonstrating the relationship between their risk management activities and the OTC derivatives positions they maintain. Such procedures could include maintaining clear documentation regarding risk measurement and clearly identifying transactions effected for risk management purposes.

Other permissible securities activities would include engaging in certain financing transactions involving repurchase and reverse repurchase agreements, buy/sell transactions,[22] and lending and borrowing transactions, as well as entering into certain transactions for arbitrage purposes.[23] Such financing and arbitrage transactions, however, would have to be limited to transactions involving securities positions established through the possession or sale of counterparty collateral, cash management, or hedging activity. OTC derivatives dealers should also develop procedures applicable to these types of transactions to ensure compliance with the restrictions set forth in the proposed rules.

In some instances it may be difficult for an OTC derivatives dealer to determine and properly document whether a transaction satisfies one of the purposes set forth in the proposed rule. In order to avoid circumstances in which an OTC derivatives dealer inadvertently violates the proposed rules through its inability to properly document the purpose of a transaction, OTC derivatives dealers would also be allowed to engage in a specified number of additional securities transactions in any calendar year. These transactions would have to relate to securities positions established through the possession or sale of counterparty collateral, cash management, or hedging activity, and firms would be required to maintain and enforces written policies and procedures reasonably designed to achieve compliance with other provisions of the proposed rule.[24] The

[20] As noted above, under the proposed rules, OTC derivatives dealers would be permitted to engage in any non-securities activity, subject to appropriate capital treatment under Exchange Act Rule 15c3–1 [17 CFR 240.15c3–1].

[21] Trading volume and the instruments traded for risk management purposes also do not provide clear links to the instruments being hedged. For example, trading volume may increase as contracts mature or during times of unusual market volatility. Also, instruments based on one security may be hedged by trading other securities (or securities derivatives) where a relationship exists between the value or performance of the two securities. This relationship may change over time or under different market conditions.

[22] A buy/sell transaction is in many respects the economic equivalent of a repurchase transaction, except that title to the debt instrument that is the subject of the transaction passes to another party and it is that party, rather than the original owner, who receives payments of interest made during the term of the buy/sell transaction.

[23] Consistent with the proposed limitations on the securities activities of OTC derivatives dealers, permissible arbitrage transactions would be limited to transactions involving closely related cash market and derivative instruments that are effected close to one another in time for purposes of taking advantage of price disparities in different markets. An example would include transactions involving the purchase or sale of an equity security and the acquisition of an option on the same equity security that are effected close together in time, taking into consideration market liquidity and hours of market operation.

[24] Except to the extent expressly permitted under the proposed rules, an OTC derivatives dealer would not be permitted to engage directly or indirectly in any activity that may otherwise cause it to be a ''dealer'' as defined in Section 3(a)(5) of the Exchange Act [15 U.S.C. § 78c(a)(5)]. This would include, but not be limited to, (1) purchasing or selling securities as principal from or to customers; (2) carrying a dealer inventory in securities (or any portion of an affiliated broker-dealer's inventory); (3) quoting a market in or publishing quotes for securities (other than quotes on one side of the market on a quotations system

Continued

Commission proposes that the number of additional securities transactions be set at 150 per calendar year. The Commission requests comment on the likely uses and effects of this provision, and whether the number of allowable additional securities transactions should be more or less than 150.

As noted above, the proposed rules would also allow OTC derivatives dealers to issue and reacquire issued securities, including warrants on securities, hybrid securities, and structured notes. Proposed Rule 3b–16 defines a hybrid security as a security that incorporates payment features economically similar to options, forwards, futures, swap agreements, or collars involving currencies, interest rates, commodities, securities, or indices (or any combination, permutation, or derivative of such contract or underlying interest). As discussed in Section II.C. below, the issuance and repurchase of issued securities, such as warrants on securities, hybrid securities, and structured notes, by an OTC derivatives dealer would have to be effected through a fully regulated broker-dealer.

B. Proposed Amendment to Rule 15b1–1; Registration with the Commission

As discussed above, OTC derivatives dealers would be a part of a special class of broker-dealers that could elect to register with the Commission under a limited regulatory structure. Firms that elect to register as OTC derivatives dealers would register with the Commission by filing an application for registration on Form BD, the Uniform Application for Broker-Dealer Registration.[25] Under the proposed amendments to Exchange Act Rule 15b1–1,[26] OTC derivatives dealers would file Form BD with the Central Registration Depository, a computer system operated by the National Association of Securities Dealers, Inc. (''NASD''), in accordance with the instructions contained on the form. In completing Form BD, an OTC derivatives dealer would respond to Item 10, which asks an applicant to disclose its planned business activities, by checking ''other'' and writing in that it proposes to engage solely in the business of an OTC derivatives dealer.

C. Proposed Rule 15a–1; Transactions by OTC Derivatives Dealers

As discussed above in connection with the proposed definition of ''OTC derivatives dealer,'' the Commission expects that OTC derivatives dealers would be engaged primarily in transactions involving OTC derivative instruments for which these dealers act as counterparty. They would also be permitted to engage in any non-securities transaction, subject to appropriate capital treatment.

As discussed in Section II.A.4. above, because OTC derivatives dealers would be a class of registered broker-dealers subject to a lesser degree of regulation, the Commission believes it would be appropriate to limit the securities activities conducted by these firms. Consistent with the definition of OTC derivatives dealer in proposed Rule 3b–12, such an entity would be permitted to (i) act as counterparty in securities (and non-securities) transactions in eligible OTC derivative instruments with permissible derivatives counterparties, (ii) issue and reacquire issued securities, including warrants on securities, hybrid securities, and structured notes, through a fully regulated broker-dealer, and (iii) engage in other securities transactions as the Commission may designate by order.[27] In connection with these activities, OTC derivatives dealers would also be permitted to engage in permissible risk management, arbitrage, and trading transactions, as defined in proposed Rule 3b–15. Proposed Rule 15a–1, however, would require any securities transaction by an OTC derivatives dealer to be effected through a fully regulated broker-dealer.[28]

The requirement that securities transactions be effected through a fully regulated broker-dealer means that the dealer's counterparties in these transactions would be considered customers of the fully regulated broker-dealer. In these transactions, all applicable SRO sales practices requirements would apply. In addition, all persons having contact with counterparties would need to be properly qualified registered representatives of the fully regulated broker-dealer. For example, in a transaction involving a securities OTC derivative instrument, such as an OTC option on a U.S. government security, any person discussing the terms of the transaction with the counterparty would have to be a registered representative of the fully regulated broker-dealer. This person, however, could be a dual employee of both the fully regulated broker-dealer and the OTC derivatives

generally available to non-broker-dealers, such as a retail screen broker for government securities) in connection with the purchase or sale of securities permitted under proposed Rule 3b–15; (4) holding itself out as a dealer or market-maker or as being otherwise willing to buy or sell one or more securities on a continuous basis; (5) engaging in trading in securities for the benefit of others (including any affiliate), rather than solely for the purpose of the OTC derivatives dealer's investment, liquidity, or other permissible trading objective; (6) providing incidental investment advice with respect to securities; (7) participating in a selling group or underwriting with respect to securities; or (8) engaging in purchases or sales of securities from or to an affiliated broker-dealer except at prevailing market prices.

[25] 17 CFR 249.501.

[26] 17 CFR 240.15b1–1.

[27] The Commission is also proposing to amend Rule 30–3 [17 CFR 200.30–3] to delegate to the Director of the Division of Market Regulation its authority to designate additional securities transactions in which OTC derivatives dealers would be permitted to engage.

[28] Exchange Act Rule 10b–10 [17 CFR 240.10b–10] requires broker-dealers to send a written confirmation of each securities transaction with a customer at or before completion of the transaction, containing certain material information about the transaction. In a securities transaction between an OTC derivatives dealer and a customer, effected through a fully regulated broker-dealer, the OTC derivatives dealer and the fully regulated broker-dealer would each be responsible for sending a confirmation to the customer under the rule. Certain customers, however, could choose not to receive two confirmations for each securities transaction they enter into with an OTC derivatives dealer. Customers, therefore, could instruct the OTC derivatives dealer and the fully regulated broker-dealer effecting securities transactions on its behalf to send one joint confirmation (''joint confirmation'') to the customer on behalf of both parties.

The customer's instructions to receive a joint confirmation would have to (1) explicitly state which of the parties (the OTC derivatives dealer or the fully regulated broker-dealer) is to be responsible for sending the confirmation; (2) be a separate instrument from the basic account opening documents with the OTC derivatives dealer and the fully regulated broker-dealer; (3) not be a condition of entering into securities transactions with the OTC derivatives dealer; and (4) not be induced by differential fees or other costs based on whether such an instruction is provided.

A joint confirmation, sent on behalf of both the OTC derivatives dealer and the fully regulated broker-dealer effecting the transaction would have to disclose all of the information required of either party under the rule, including, but not limited to the identity of the security, the trade price, and the date and time of the trade, the identity of each party and its capacity in the transaction, the fact that the OTC derivatives dealer is not a member of the Securities Investor Protection Corporation, and any transaction-related compensation earned by either the fully regulated broker-dealer or the OTC derivatives dealer in connection with the transaction. Both the OTC derivatives dealer and the fully regulated broker-dealer would be considered fully responsible for the contents of the joint confirmation, regardless of which party is responsible for sending it to the customer. The customer's instruction to receive a joint confirmation would not otherwise affect the obligations of either party to the customer under the anti-fraud provisions of the federal securities laws.

OTC derivatives dealers and fully regulated broker-dealers relying upon the written instructions of their customer to send a joint confirmation would each have to obtain and preserve a copy of the customer's written instructions, for the period in which they are relying on those instructions, in an easily accessible place, and for a period of not less than two years after they no longer rely on the instructions to send a joint confirmation.

dealer, subject to appropriate supervision by both firms.[29]

The requirement that securities OTC derivatives transactions be effected through a fully regulated broker-dealer is consistent with existing regulatory requirements that apply to the purchase and sale of securities and is, in part, designed to ensure that all securities transactions remain subject to existing sales practice requirements. It is also intended to prevent an unforeseen regulatory disparity from arising between OTC derivatives dealers, which would be subject to modified capital and margin requirements, and other fully regulated broker-dealers in connection with conducting securities transactions.

D. Exemptions

1. Proposed Rule 36a1–1; Exemption From Section 7 of the Exchange Act for OTC Derivatives Dealers

OTC derivative markets are credit sensitive. Whether a dealer and a counterparty will enter into a transaction involving an OTC derivative instrument depends on their assessment of the other's ability to meet its financial obligations under the terms of the instrument. The creditworthiness of the counterparties is also a factor in determining the price of the transaction. As part of any OTC derivatives transaction, a dealer may require its counterparty to deposit collateral with the dealer to provide some assurance of the counterparty's ability to perform.

Both the ability of the dealer to collect collateral to secure payment under an OTC derivative instrument, and the amount of collateral the dealer must collect, will depend on the regulatory status of the dealer. Federal regulations that govern the collateral, or margin, that must be collected in connection with securities transactions set up certain competitive inequalities between OTC derivatives dealers that are registered broker-dealers and others, including banks. Registered broker-dealers that extend credit for the purpose of purchasing or carrying securities are required to comply with the provisions of Regulation T.[30] The margin requirements for banks are contained in Regulation U.[31]

In general, Regulation T limits the flexibility of broker-dealers to extend credit in securities OTC derivatives transactions by prohibiting extensions of credit on securities other than margin securities. Regulation U, however, offers bank dealers greater flexibility by allowing them to extend credit on collateral other than margin stock up to the ''good faith'' loan value of the collateral, as defined in Regulation U.[32] This means that under Regulation U, dealers may extend credit on securities other than margin stock, including securities OTC derivative instruments.

Compliance with the more restrictive requirements of Regulation T puts broker-dealers at a disadvantage in competing with banks and other derivatives dealers by preventing them from offering credit in securities OTC derivatives transactions on terms that are as favorable as those offered by other dealers. Applying Regulation U to extensions of credit by OTC derivatives dealers would provide sufficient safeguards against leverage, while allowing OTC derivatives dealers to extend credit on the broader range of securities OTC derivative products that make up their business.

Accordingly, under proposed Rule 36a1–1, OTC derivatives dealers would be exempted from the margin requirements of Section 7 of the Exchange Act, as well as Regulation T, in connection with any extension of credit made by the OTC derivatives dealer in securities transactions permitted under proposed Rule 15a–1. This exemption, however, would be conditioned on the OTC derivatives dealer complying with the requirements of Regulation U. The Commission believes that this exemption would result in the most appropriate margin regulation for OTC derivatives dealers and more equal treatment of banks and securities firms active in OTC derivative markets.[33] The Commission solicits commenters' views regarding the proposed margin treatment of transactions by OTC derivatives dealers.

The relief proposed under Rule 36a1–1 would apply to extensions of credit by OTC derivatives dealers. Section 7, however, would also apply to extensions of credit to OTC derivatives dealers by other lenders. Credit extended to an OTC derivatives dealer, like credit extended to a fully regulated broker-dealer, would be exempted from Section 7 if it satisfies the exemptive provisions contained in Section 7. Specifically, if a substantial part of the business conducted by an OTC derivatives dealer consists of transactions with persons other than brokers or dealers, credit extended to the OTC derivatives dealer would be exempted from Section 7 under the provisions of Section 7(d)(2)(C)(i).[34] To the extent that firms desiring to take advantage of the proposed regulations applicable to OTC derivatives dealers do not believe that they would be able to take advantage of the exemptive provisions of Section 7(d)(2), the Commission solicits further comment on the proposed business activities of OTC derivatives dealers, and whether other exemptive relief may be needed to address borrowing by these firms.

2. Proposed Rule 15b9–2; SRO Exemption for OTC Derivatives Dealers

Proposed Rule 15b9–2 would exempt OTC derivatives dealers from membership in an SRO, subject to certain conditions. In general, registered broker-dealers must become members of an SRO.[35] This SRO membership requirement ensures that securities transactions meet SRO sales practice requirements, that employees of SRO member firms who sell securities satisfy certain minimum, uniform licensing requirements, that SRO members satisfy maintenance margin and financial responsibility requirements, and that member firms adhere to certain principles of trade and business conduct.[36]

Because only a part of the business conducted by OTC derivatives dealers is expected to involve securities transactions, it is not necessary to require OTC derivatives dealers to become members of an SRO and be subject to the full range of SRO regulation. All securities transactions done by an OTC derivatives dealer would be required to be effected through a fully regulated broker-dealer, and be handled by properly qualified registered representatives of the fully regulated broker-dealer. SRO sales practice requirements would also apply to these securities transactions. The Commission, therefore, proposes to exempt OTC derivatives dealers from SRO membership, subject to certain conditions.

[29] Fully regulated broker-dealers would be responsible for supervising only the securities activities of these dual employees. They would not be responsible for supervising a dual employee's non-securities OTC derivatives activities conducted on behalf of the OTC derivatives dealer.

[30] 12 CFR 220.1.

[31] 12 CFR 221.1.

[32] 12 CFR 221.2(f).

[33] The proposed exemption from Section 7 [15 U.S.C. 78g] and Regulation T [12 CFR 220.1] would not be available to extensions of credit made directly by a fully regulated broker-dealer acting as agent in a transaction between an OTC derivatives dealer and a permissible derivatives counterparty. However, OTC derivative dealers that extend credit in transactions that are required to be effected through a fully regulated broker-dealer would still be able to rely on the exemption from Section 7 and Regulation T provided under proposed Rule 36a1–1.

[34] 15 U.S.C. 78(g)(d)(2)(C)(i).

[35] See Exchange Act Section 15(b)(8) [15 U.S.C. 78o(b)(8)].

[36] See Exchange Act Sections 15(b)(8) and 15A(g)(3) [15 U.S.C. 78o(b)(8); 15 U.S.C. 78o–3(g)(3)].

To be eligible for the exemption from SRO membership contained in proposed Rule 15b9–2, an OTC derivatives dealer would be required to enter into an agreement with the examining authority designated pursuant to Section 17(d) of the Exchange Act[37] for one or more of its registered broker-dealer affiliates. Under this agreement, the examining authority would agree to conduct a review of the activities of the OTC derivatives dealer. It would also be required to report to the Commission any potential violation of the Commission's rules, and to evaluate the dealer's procedures and controls designed to prevent violations. SRO examination of OTC derivatives dealers would provide important benefits to the Commission and the public without requiring full SRO membership. OTC derivatives dealers would also be subject to direct examination by Commission staff. The Commission solicits comment on the proposed exemption from SRO membership. Alternatively, the Commission solicits comment on whether to require OTC derivatives dealers to become members of either the NASD or the New York Stock Exchange. Under this alternative, these SROs would be authorized to inspect OTC derivatives dealers and to enforce applicable Commission rules. They would not, however, be permitted to apply or enforce existing or new SRO rules.

E. Net Capital Requirements for OTC Derivatives Dealers

1. Reasons for Amending the Net Capital Rule; Overview

The Commission proposes to amend the net capital rule, Exchange Act Rule 15c3–1,[38] as it would apply to OTC derivatives dealers. In general, the net capital rule requires every registered broker-dealer to maintain certain specified minimum levels of liquid assets, or net capital, to enable those firms that fall below the minimum net capital requirements to liquidate in an orderly fashion without the need for a formal legal proceeding. The rule is designed to protect the customers of a broker-dealer from losses that can be incurred upon a broker-dealer's failure. The rule prescribes different required minimum levels of capital based upon the nature of the broker-dealer's business and whether the firm handles customer funds or securities.

When calculating its net capital, a broker-dealer must reduce its capital by certain percentage amounts, or haircuts, based on the market value of the securities it owns. Discounting the value of a broker-dealer's proprietary securities positions provides a capital cushion if the value of these securities positions were to decline. Haircuts also cover other risks faced by the firm, such as credit and liquidity risk.

The Commission has been told that few swaps and other types of OTC derivative instruments are booked in registered broker-dealers because of the way these transactions are treated under the net capital rule. There are two reasons for this. First, the current net capital rule requires a firm to subtract most unsecured receivables from its net worth when calculating its net capital. For example, for an interest rate swap, the rule requires that the current value of the next net interest payment due from a counterparty be deducted from the firm's net worth in calculating its net capital. Also, any unrealized gains on the swap would have to be deducted. Second, the rule does not allow broker-dealers to take into account positions that offset their OTC derivatives positions to the same extent as banks or foreign dealers using value-at-risk (''VAR'') models.[39] This treatment of OTC derivatives transactions often requires broker-dealers to reserve more capital with respect to these transactions than banks or foreign broker-dealers have to reserve.

The Commission is addressing the current rule's treatment of OTC derivatives transactions by proposing certain amendments to the rule to reduce the capital charges on these types of transactions. Under proposed Appendix F of Rule 15c3–1, OTC derivatives dealers would be permitted to add back to their net worth any trading gains and unsecured receivables arising from transactions in eligible OTC derivative instruments with permissible derivatives counterparties.[40] Appendix F would also allow OTC derivatives dealers to use VAR models to compute their capital charges on proprietary positions instead of taking haircuts on them as required under the current rule. As mentioned above, the current haircut approach allows limited offsetting among positions in comparison to using a VAR model to compute capital charges. Allowing OTC derivatives dealers to use VAR models to compute capital charges on OTC derivative instruments would enable these dealers to reduce their market risk capital charges to the extent that they may hold offsetting positions.

2. Reasons for Allowing OTC Derivatives Dealers To Use VAR Models

Currently, several large firms use VAR models as part of their risk management system. These firms use VAR modelling to analyze, control, and report the level of market risk from their trading activities. In general, VAR is an estimate of the maximum potential loss expected over a fixed time period at a certain probability level. For example, a firm may use a VAR model with a ten-day holding period and a 99 percentile criteria to calculate that its $100 million portfolio has a potential loss of $150,000. In other words, the firm's VAR model has forecasted that with this portfolio the firm may lose $150,000 during a ten-day period once every 100 ten-day periods (*i.e.*, with a probability of 1%).

In practice, VAR models aggregate several components of price risk into a single quantitative measure of the potential for loss. In addition, VAR is based on a number of underlying mathematical assumptions and firm specific inputs. For example, VAR models typically assume normality and that future return distributions and correlations can be predicted by past returns.[41]

The current rule permits using statistical models only for limited types of securities.[42] The Commission

[37] 15 U.S.C. 78q(d).

[38] 17 CFR 240.15c3–1.

[39] In a companion release being issued at the same time as this release, the Commission is proposing amendments to the net capital rule to recognize offsets among additional types of instruments. Exchange Act Rel. No. 39455 (Dec. 17, 1997).

[40] See *infra* Section II.E.3.b. for a discussion of proposed Appendix F.

[41] The Commission recognizes that there is a wide variety of secondary source information discussing both the positive and negative aspects of VAR. See Philippe Jorion, *Value at Risk: The New Benchmark for Controlling Market Risk* (1996) (explaining how to use VAR to manage market risk); JP Morgan, *RiskMetrics-Technical Document* (1994) (providing a detailed description of RiskMetrics, which is JP Morgan's proprietary statistical model for quantifying market risk in fixed income and equity portfolios); Tanya Styblo Beder, *VAR: Seductive but Dangerous*, Financial Analysts Journal, September-October 1995, at 12 (giving an extensive analysis of the different results from applying three common VAR methods to three model portfolios); Darrell Duffie and Jun Pan, *An Overview of Value at Risk*, The Journal of Derivatives, Spring 1997, at 7 (giving a broad overview of VAR models); Darryll Hendricks, *Evaluation of Value-at-Risk Models Using Historical Data*, Federal Reserve Bank of New York Economic Policy Review, April 1996, at 39 (examining twelve approaches to VAR modelling on portfolios that do not include options or other securities with non-linear pricing); and Robert Litterman, *Hot Spots and Hedges*, Goldman Sachs Risk Management Series (1996) (giving a detailed analysis on portfolio risk management, including how to identify the primary sources of risk and how to reduce these risks).

[42] See 17 CFR 240.15c3–1a. The Commission recently amended Appendix A to permit broker-dealers to employ theoretical option pricing models in determining net capital requirements for listed options and related positions. Exchange Act Rel. No. 38248 (Feb. 6, 1997), 62 FR 6474 (Feb. 12, 1997).

believes, however, that a more flexible approach for determining capital requirements for OTC derivatives dealers would be appropriate because of the special nature of their business and the additional financial responsibility requirements that would be applicable to these firms. The proposed rule requires an OTC derivatives dealer to maintain a minimum of $100 million in tentative net capital [43] and at least $20 million in net capital. OTC derivatives dealers would also be prohibited from accepting or holding customer funds or securities or generally from owing money or securities to customers in connection with securities activities. OTC derivatives dealers would, however, be allowed to hold counterparty collateral or owe money or securities to counterparties, but only as a result of contractual commitments. Finally, OTC derivatives dealers would be required to establish risk management controls pursuant to proposed Rule 15c3–4.

The more flexible capital treatment that would be available to OTC derivatives dealers under the proposed rules reflect international efforts to standardize capital requirements. During the past few years, the Commission has actively participated in several international undertakings to gain further experience with the use of VAR models to measure market and credit risk. For example, through its membership in the International Organization of Securities Commissions (''IOSCO''), the Commission has been cooperating with the Basle Committee on Banking Supervision (''Basle Committee'').[44] In December 1995, the Basle Committee amended its Capital Accord [45] to incorporate market risk capital requirements and approved the use of proprietary VAR models to determine bank capital requirements for market risk.[46] The Capital Accord recommended a number of quantitative and qualitative conditions that should apply to a bank's use of models to ensure that VAR models are prudently used.

Rules adopted recently by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (collectively, the ''U.S. Banking Agencies'') were designed to implement the Capital Accord for U.S. banks and bank holding companies.[47] Proposed Appendix F is generally consistent with the U.S. Banking Agencies' rules, and incorporates the quantitative and qualitative conditions imposed on banking institutions.

In a companion release, the Commission is considering whether it should permit VAR models to be used by broker-dealers other than OTC derivatives dealers for regulatory capital purposes.[48] By allowing OTC derivatives dealers to use VAR models in calculating their net capital requirement, the Commission would have a valuable opportunity to gain experience with the use of these models by entities within its jurisdiction. This experience would enable the Commission to reassess its current rules for determining capital charges for market risk and determine whether more intensive subjective examinations would be needed to ensure compliance with Commission regulations concerning the use of models.

3. *Discussion of Net Capital Requirements*

a. *Proposed Paragraph 15c3–1(a)(5).* Under proposed paragraph (a)(5) of Rule 15c3–1, OTC derivatives dealers would be required to maintain tentative net capital of not less than $100 million and net capital of not less than $20 million. The Commission believes the minimum of $100 million in tentative net capital is necessary to ensure against excessive leverage and risks other than credit or market risk, all of which are now factored into the current haircuts, and to provide for a cushion of capital against severe market disturbances.[49] Proposed paragraph (a)(5) would give OTC derivatives dealers the option of either taking capital charges, or haircuts, computed in accordance with paragraph (c)(2)(vi) of Rule 15c3–1 or taking capital charges for market and credit risk computed under proposed Appendix F to Rule 15c3–1. The Commission requests comment on whether the $100 million tentative net capital and $20 million net capital requirements would be adequate to ensure against excessive leverage and risks other than credit or market risk.

b. *Proposed Appendix F.* Proposed Appendix F would apply only to OTC derivatives dealers that elect to be subject to the appendix. OTC derivatives dealers that elect to be subject to Appendix F would be required to calculate specific capital charges for market and credit risk. They would also be required to maintain VAR models that meet certain minimum qualitative and quantitative requirements.

i. Market Risk. OTC derivatives dealers electing to apply Appendix F would deduct from their net worth a capital charge for market risk [50] that is computed using one of two methods. First, OTC derivatives dealers would be able to use the full VAR method to calculate capital charges for market risk exposure for transactions in eligible OTC derivative instruments and other proprietary positions of the OTC derivatives dealer. Under the full VAR method, a market risk capital charge would be equal to the VAR of its positions multiplied by a factor specified in Appendix F.[51]

OTC derivatives dealers would be required to obtain authorization from the Commission before using VAR models. An OTC derivatives dealer planning to use the full VAR method would send an application to the Commission describing its VAR model, including whether the firm has developed its own model and how the qualitative and quantitative aspects described in Appendix F are

[43] For an OTC derivatives dealer that elects to compute its market risk charges under proposed Appendix F, the term ''tentative net capital'' would mean the net capital of an OTC derivatives dealer before the application of the charges for market and credit risk as computed pursuant to proposed Appendix F and increased by unsecured receivables (unrealized gains) resulting from eligible OTC derivative instruments.

[44] The Governors of the G–10 countries established the Basle Committee in 1974 to provide a forum for ongoing cooperation among member countries on banking supervisory matters.

[45] The Basle Accord, or Capital Accord, is a common measurement system and a minimum standard for capital adequacy of international banks in the G–10 countries.

[46] In July 1995, IOSCO's Technical Committee issued a paper stating that further information and analysis was required before the Technical Committee could consider the use of internal models by securities firms to set regulatory capital standards for market risk. Due to the differences between banks and securities firms, the Technical Committee believed that more work was necessary before allowing securities firms to use VAR models to establish their capital requirements. The Implications for Securities Regulators of the Increased Use of Value At Risk Models by Securities Firms, Technical Committee of IOSCO, July 1995.

[47] Department of the Treasury, Office of the Comptroller of the Currency Docket No. 96–18, Federal Reserve System, Docket No. R–0884, Federal Deposit Insurance Corporation, RIN 3064–AB64 (Sept. 6, 1996), 61 FR 47358.

[48] Exchange Act Rel. No. 39456 (Dec. 17, 1997).

[49] To some degree, the multiplication factor applied to a firm's VAR is designed to provide capital for risks other than credit or market risk. See *infra* Section II.E.3.b.iii. for a discussion of how an OTC derivatives dealer would determine its appropriate multiplication factor.

[50] In general, market risk is the risk of adverse price movements resulting from a change in market prices, interest rates, volatilities, correlations, or other market factors.

[51] See *infra* Section II.E.3.b.iii. for a discussion of how an OTC derivatives dealer would determine the appropriate multiplication factor.

incorporated into the model.[52] The firm's application would also include a description of the risk management controls adopted by the firm pursuant to proposed Rule 15c3–4.[53]

Second, an OTC derivatives dealer could use an alternative method of computing the market risk capital charge for equity instruments and OTC options and use VAR for its other proprietary positions. This alternative method would also be used by a firm that does not receive Commission authorization to use a VAR model for equity instruments. Under the alternative method, an OTC derivatives dealer would deduct from its net worth an amount equal to the largest theoretical loss calculated in accordance with the theoretical pricing model set forth in Appendix A of Rule 15c3–1.[54] The OTC derivatives dealer would be permitted to use its own theoretical pricing model as long as it contains the minimum pricing factors set forth in Appendix A.[55]

ii. Credit Risk. OTC derivatives dealers electing to apply Appendix F would deduct from their net worth a capital charge for credit risk.[56] This charge would have two parts and would be computed on a counterparty by counterparty basis. First, for each counterparty, OTC derivatives dealers would take a capital charge equal to the net replacement value in the account of the counterparty (''net replacement value'')[57] multiplied by 8%, and further multiplied by a counterparty factor. The counterparty factor would be based on the counterparty's rating by at least two nationally recognized statistical rating organizations (''NRSROs'' or ''rating organizations''). The counterparty factors would range from 20% for counterparties that are highly rated to 100% for counterparties with ratings among the lowest rating categories. By using the ratings of the rating organizations as a basis, the counterparty factors would link the size of the credit risk capital charge to the perceived risk that the counterparty may default. A charge of 100% of the net replacement value would be assessed for counterparties that are in bankruptcy or whose bonds are in default. The Commission requests comment on alternatives to relying on the ratings of NRSROs for approximating the risk that a counterparty may default.

The second part of the credit risk charge would consist of a concentration charge that would apply when the net replacement value in the account of any one counterparty exceeds 25% of the OTC derivatives dealer's tentative net capital. In these situations, the amount of the concentration charge would also be based on the counterparty's rating by at least two rating organizations. For counterparties that are highly rated, the concentration charge would equal 5% of the amount of the net replacement value in excess of 25% of the OTC derivatives dealer's tentative net capital. The concentration charge would increase in relation to the OTC derivatives dealer's exposure to lower rated counterparties. For example, the concentration charge for counterparties with ratings among the lowest rating categories would equal 50% of the amount of the net replacement value in excess of 25% of the OTC derivatives dealer's tentative net capital. Further, if the aggregate net replacement values of all counterparties exceeds 300% of the OTC derivatives dealer's tentative net capital, the OTC derivatives dealer would deduct 100% of the excess from its net worth. The Commission requests comment on whether the 300% threshold for determining an overall concentration charge would result in excessive concentration risk charges.

If a counterparty is not rated by a rating organization, an OTC derivatives dealer would be permitted to use its own ratings of the counterparty to calculate its credit risk charge. In these situations, however, the OTC derivatives dealer would have to demonstrate that its ratings criteria and due diligence procedures, including procedures for the initial analysis and ongoing review of the counterparty, are equivalent to those used by NRSROs.

iii. Qualitative Requirements for Value-at-Risk Models. OTC derivatives dealers that elect to apply Appendix F would be required to have VAR models that meet certain minimum qualitative requirements. The Commission proposes to establish these minimum requirements to ensure that the VAR models used for computing market risk capital charges are the same as those used to perform internal risk management functions.

The qualitative requirements would address four aspects of an OTC derivatives dealer's risk management system. First, an OTC derivatives dealer's VAR model would have to be integrated into the OTC derivatives dealer's daily risk management process. Second, an OTC derivatives dealer's policies and procedures would have to identify and provide for appropriate stress tests.[58] The OTC derivatives dealer's policies and procedures would have to identify the procedures to follow in response to the results of the stress tests and backtests, and the OTC derivatives dealer would be required to follow these procedures. Third, an OTC derivatives dealer's VAR model and risk management systems would be required to undergo both periodic independent reviews that would be performed by internal audit staff, and annual reviews that would be conducted by an independent public accountant. Fourth, OTC derivatives dealers would be required to conduct backtesting.

Backtesting would be intended to gauge the accuracy of a dealer's model by comparing the dealer's projections against actual trading results. The OTC derivatives dealer would be required to conduct backtesting by comparing each of its most recent 250 business days' actual net trading profit or loss with the corresponding daily VAR measures. In addition, once each quarter, the OTC derivatives dealer would have to identify the number of exceptions, that is, the number of business days for which the actual daily net trading loss, if any, exceeds the corresponding daily VAR measure. The number of exceptions would determine the multiplication factor the OTC

[52] See *infra* Sections II.E.3.b.iii. through iv. for a description of the qualitative and quantitative requirements.

[53] See *infra* Section II.H.3. for a description of the risk management controls that would be required by proposed Rule 15c3–4.

[54] 17 CFR 240.15c3–1a. The Commission recently amended Appendix A to include theoretical pricing models. Exchange Act Rel. No. 38248 (Feb. 6, 1997), 62 FR 6474 (Feb. 12, 1997).

[55] 17 CFR 240.15c3–1a(b)(1)(B). The minimum pricing factors in Appendix A require that a pricing model consider:

(1) The current spot price of the underlying asset;

(2) The exercise price of the option;

(3) The remaining time until the option's expiration;

(4) The volatility of the underlying asset;

(5) Any cash flows associated with ownership of the underlying asset that can reasonably be expected to occur during the remaining life of the option; and

(6)The current term structure of interest rates.

[56] In general, credit risk is the risk that a counterparty will fail to perform its obligations to an OTC derivatives dealer.

[57] For purposes of calculating credit risk charges, net replacement value in the account of a counterparty would mean the aggregate value of all receivables due from that counterparty (which would be computed by marking the value of such receivables to market daily), including the effect of legally enforceable netting agreements and the application of liquid collateral.

[58] Stress tests are used to evaluate changes in the value of a firm's portfolio under extreme market conditions. The Commission expects stress tests to include the core risk factors of: (1) Parallel yield curve shifts; (2) changes in the steepness of yield curves; (3) parallel yield curve shifts combined with changes in the steepness of yield curves; (4) changes in yield volatilities; (5) changes in the value of equity indices; (6) changes in equity index volatilities; (7) changes in the value of key currencies (relative to the U.S. dollar); (8) changes in foreign exchange rate volatilities; and (9) changes in swap spreads in at least the G–7 countries plus Switzerland. Stress tests should also be designed to reflect the composition of the firm's portfolio.

derivatives dealer would be required to use for the following quarter, and which would continue to apply until the next quarter's backtesting results are obtained or unless the Commission determines that a different adjustment or other action is appropriate. Depending on the number of exceptions, the multiplication factors would range from three to four. Increasing the multiplication factor in response to the number of backtesting exceptions increases an OTC derivatives dealer's market risk charge, thus penalizing an OTC derivatives dealer that uses a less accurate model. Although the multiplication factor would increase an OTC derivative's dealer's market risk charge and corresponding capital requirement, the Commission intends that firms work to improve the accuracy of their models rather than set aside additional capital for an inaccurate model.

The multiplication factor is intended to cover the additional risks that would be present in an OTC derivatives dealer's portfolio, other than market and credit risk. For example, an OTC derivatives dealer would be subject to legal, liquidity, and operational risk. Operational risk is generally the risk of human error or deficiencies in the firm's operating systems, including VAR model. It is difficult to quantify and develop capital charges specifically for these risks. The Commission, however, believes that the multiplication factor would be an appropriate way to account for these other risks facing OTC derivatives dealers.

iv. Quantitative Requirements for Value-at-Risk Models. Appendix F would also contain minimum quantitative requirements to address regulatory concerns. Because broker-dealers generally use VAR models to measure portfolio volatility on a day-to-day basis, the Commission would impose certain requirements on VAR models to address regulatory capital-related concerns where a longer time horizon is appropriate. For example, OTC derivatives dealers would be required to calculate VAR measures using a confidence level with a price change equivalent to a ten-business day movement in rates and prices, rather than a one-day price movement that is used in many VAR models currently used by firms for internal risk management purposes.

F. Use of Counterparty Collateral

1. Proposed Amendments to Exchange Act Rules 8c–1 and 15c2–1; Hypothecation Rules

The Commission proposes to amend Exchange Act Rules 8c–1[59] and 15c2–1,[60] which address the hypothecation of customer securities. The hypothecation rules generally prohibit a broker-dealer from using its customers' securities as collateral to finance its own trading, speculating, or underwriting transactions. More specifically, the rules state three main principles: first, that a broker or dealer is prohibited from commingling the securities of different customers as collateral for a loan without the consent of each customer; second, that a broker or dealer cannot commingle its customers' securities with its own under the same pledge; and third, that a broker or dealer can only pledge its customers' securities up to the value of monies owed to the broker-dealer by its customers.

In privately negotiated OTC derivatives transactions, counterparties generally agree that assets pledged as collateral may be used in the business of the OTC derivatives dealer without being segregated. For this reason, it is not necessary to treat counterparties as customers of OTC derivatives dealers for purposes of Exchange Act Rules 8c–1 and 15c2–1, or to apply these rules to counterparty assets held as collateral by an OTC derivatives dealer. Accordingly, Rules 8c–1 and 15c2–1 would be amended so that an OTC derivatives dealer would not be deemed to hold collateral for the account of any customer when that collateral is received as a result of the OTC derivatives dealer acting as counterparty in transactions in eligible OTC derivative instruments and the permissible derivatives counterparty has consented to the unrestricted use of its collateral after receiving appropriate disclosure.

2. Proposed Amendments to Exchange Act Rule 15c3–3; Customer Protection Rule

The Commission also proposes to amend Exchange Act Rule 15c3–3,[61] the Commission's customer protection rule. The customer protection rule generally prohibits a broker or dealer from using customers' funds and securities to finance its business. As a result, this rule helps to ensure that customers can promptly obtain their funds or securities from a broker-dealer.

As amended, Rule 15c3–3 would clarify that the term ''customer,'' as used in the rule, is not intended to include a permissible derivatives counterparty that has consented to the unrestricted use of its collateral by an OTC derivatives dealer after receiving appropriate disclosure. As noted previously, counterparties in privately negotiated OTC derivative transactions generally agree that assets pledged as collateral may be used in the business of the OTC derivatives dealer without being segregated.

G. Proposed Rule 36a1–2; Exemption From SIPA

Under proposed Rule 36a1–2, OTC derivatives dealers would be exempted from the provisions of the Securities Investor Protection Act of 1970 (''SIPA''),[62] including membership in the Securities Investor Protection Corporation (''SIPC'').[63] Under SIPA, broker-dealers registered under Section 15(b) become SIPC members. The Commission is concerned that the application of SIPA's liquidation provisions to an OTC derivatives dealer in bankruptcy could undermine certain provisions of the bankruptcy code applicable to the dealer's business.[64] The potential application of SIPA to OTC derivatives dealers would create legal uncertainty about the rights of counterparties in transactions with registered OTC derivatives dealers in the event of dealer insolvency.[65] This

[59] 17 CFR 240.8c–1.

[60] 17 CFR 240.15c2–1.

[61] 17 CFR 240.15c3–3.

[62] 15 U.S.C. 78aaa *et seq.*

[63] Section 2 of SIPA [15 U.S.C. 78bbb] generally incorporates SIPA into the Exchange Act.

[64] The bankruptcy code contains certain exceptions to its automatic stay provisions that enable a counterparty in a derivatives transaction to exercise its rights to liquidate a position (*i.e.,* it preserves a counterparty's contractual termination, setoff, and collateral foreclosure rights) in the event of the other counterparty's insolvency. See, e.g., 11 U.S.C. Section 362(b)(6), (7), (17); *id.* at Sections 555, 556, 559, and 560. Several of these provisions, however, may be subject to a stay order under SIPA. See 11 U.S.C. Section 555 (contractual right to liquidate a securities contract); *id.* at Section 559 (contractual right to liquidate a repurchase agreement).

[65] The Commission believes that the counterparty collateral that would be held by OTC derivatives dealers should not be considered customer assets for purposes of SIPA. Congress enacted SIPA in 1970 primarily to protect the retail customers of a broker-dealer in the event of its financial difficulty. Congress was concerned that prior to the enactment of SIPA, public customers sometimes had encountered difficulty in obtaining their cash balances or securities from insolvent broker-dealers. Congress analogized the need for SIPA to the need which prompted establishment of the Federal Deposit Insurance Corporation. H.R. Rep. No. 91–1613, 91st Cong., 2d Sess. 2 (1970). The Commission believes that the type of privately negotiated transactions and counterparty assets

Continued

uncertainty could impair the ability of securities firms electing to register OTC derivatives dealers to compete effectively with banks and foreign dealers, which are not subject to similar legal uncertainty.

Accordingly, the Commission believes that the purposes of SIPA would not be promoted by its application to OTC derivatives dealers, and may in fact result in legal uncertainty for OTC derivatives dealer counterparties. The Commission therefore believes that exempting OTC derivatives dealers from SIPA would be necessary or appropriate in the public interest and consistent with the protection of investors. The Commission requests comments on the need, appropriateness, and form of the proposed exemption.

H. Books and Records

1. Proposed Amendments to Exchange Act Rules 17a–3 and 17a–4; Books and Records to be Maintained by OTC Derivatives Dealers

OTC derivatives dealers, like other broker-dealers that are registered with the Commission, would be required to comply with the books and records requirements of Exchange Act Rules 17a–3 [66] and 17a–4.[67] Section 17(a)(1) of the Exchange Act [68] requires registered broker-dealers to make, keep, furnish, and disseminate records and reports that are prescribed by the Commission as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. Consistent with the requirements of Section 17(a)(1), Rules 17a–3 and 17a–4 require all broker-dealers to make and keep certain records relating to their business activities. These rules would also apply to OTC derivatives dealers.[69]

Currently, Rule 17a–3 does not specifically provide for maintaining records relating to the full range of activities that would be conducted by OTC derivatives dealers. For this reason, Rule 17a–3 would be amended to reflect the activities of OTC derivatives dealers and to require that OTC derivatives dealers compile a register of all transactions in eligible OTC derivative instruments. The Commission also proposes to make technical amendments to Rule 17a–4 to require OTC derivatives dealers to retain the records required to be made pursuant to proposed Rules 15c3–4 and 17a–12. As discussed in more detail below, the records required under Rule 17a–12 would be similar to those currently required under Rule 17a–5. In part, these records would include the OTC derivatives dealer's risk management control guidelines and information supporting data contained in the dealer's annual audited financial statements. These records would have to be retained for three years.

2. Proposed Amendments to Exchange Act Rule 17a–11; Notification Requirements

OTC derivatives dealers would be subject to the provisions of Exchange Act Rule 17a–11, which requires a broker-dealer to report capital and other operational problems to the Commission and the broker-dealer's examining authority within specified time periods.[70] Because Rule 17a–11 provides the Commission with valuable tools in overseeing the financial and operational health of broker-dealers, it is appropriate that Rule 17a–11 also apply to OTC derivatives dealers.

Rule 17a–11 would be amended to take into consideration the new tentative net capital requirements that would apply to OTC derivatives dealers. As a result, if an OTC derivatives dealer's tentative net capital were to drop below 120 percent of its required minimum, the dealer would be required to provide notice both to the Commission and the examining authority responsible for reviewing its activities pursuant to proposed Rule 15b9–2. Notice would also be required in the event the OTC derivatives dealer's tentative net capital were to drop below its required minimum. This notice requirement would provide the Commission and the examining authority with early warning of an OTC derivatives dealer's financial or operational problems and allow the Commission and the examining authority to increase their supervision of the dealer's operations. It would also give the Commission and the examining authority time to obtain additional information about the OTC derivatives dealer's financial condition and to take corrective action, as necessary.

3. Proposed Rule 15c3–4; Internal Risk Management Control Systems for OTC Derivatives Dealers

Section 15(c)(3) of the Exchange Act [71] enables the Commission to adopt rules and regulations regarding the financial responsibility of broker-dealers that the Commission deems necessary or appropriate in the public interest or for the protection of investors. Pursuant to this authority, the Commission is proposing Rule 15c3–4 to require OTC derivatives dealers to establish a system of internal controls for monitoring and managing the risks associated with their business activities.

Participants in OTC derivatives markets are exposed to various risks, including (1) operational risk; [72] (2) market risk; [73] (3) credit risk; [74] (4) liquidity risk; [75] and (5) legal risk.[76] These risks are due, in part, to the characteristics of OTC derivative products and the way OTC derivative markets have evolved in comparison to the markets for equity securities and listed options. For example,

(collateral) involved in the OTC derivatives business are quite different from the ordinary brokerage business and customer assets contemplated by SIPA.

[66] 17 CFR 240.17a–3.

[67] 17 CFR 240.17a–4.

[68] 15 U.S.C. 78q(a)(1).

[69] In general, Exchange Act Rule 17a–3 requires broker-dealers to make records concerning the purchases and sales of securities, receipts and deliveries of securities, and receipts and disbursements of cash. In addition, the rule requires broker-dealers to make and keep ledgers reflecting securities borrowed and securities received, repurchase and reverse repurchase agreements, and a record of net capital computations.

Exchange Act Rule 17a–4 specifies how long broker-dealers must keep the records required to be made under Rule 17a–3 and how long they must keep other records made in the normal course of business. Specifically, Rule 17a–4(b) requires broker-dealers to keep trial balances, internal audit workpapers, and net capital computations and related workpapers for three years. Rule 17a–4(b) also requires broker-dealers to keep all written agreements relating to the broker-dealer's business for three years.

[70] 17 CFR 240.17a–11. Under Rule 17a–11, if a broker-dealer's net capital falls below the required minimum level, the broker-dealer must provide both the Commission and the broker-dealer's designated examining authority with notice of such deficiency. A broker-dealer is also required to give same-day notice if it fails to make and keep current its books and records pursuant to Rules 17a–3 and 17a–4, and to submit a report within 48 hours detailing the steps it is taking to correct the problem. In addition, Rule 17a–11 requires a broker-dealer to give notice when it discovers any material inadequacy in its system of internal controls, or is notified of this inadequacy by its independent public accountant. In these instances, the broker-dealer is required to submit a report detailing steps being taken to correct the inadequacy.

[71] 15 U.S.C. 78o(c)(3).

[72] Operational risk encompasses the risk of loss due to the breakdown of controls within the firm including, but not limited to, unidentified limit excesses, unauthorized trading, fraud in trading or in back office functions, inexperienced personnel, and unstable and easily accessed computer systems.

[73] Market risk involves the risk that prices or rates will adversely change due to economic forces. Such risks include adverse effects of movements in equity and interest rate markets, currency exchange rates, and commodity prices. Market risk can also include the risks associated with the cost of borrowing securities, dividend risk, and correlation risk.

[74] Credit risk comprises risk of loss resulting from counterparty default on loans, swaps, options, and during settlement.

[75] Liquidity risk includes the risk that a firm will not be able to unwind or hedge a position.

[76] Legal risk arises from possible risk of loss due to an unenforceable contract or an ultra vires act of a counterparty.

individually negotiated OTC derivative products generally are not very liquid. Also, the absence at this time of a clearing system for OTC derivative products means that market participants face risks associated with the financial and legal ability of counterparties to perform under the terms of specific transactions. The additional exposure to credit risk, liquidity risk, and other risks makes it necessary for OTC derivatives market participants to implement a risk management control system.

During the past few years, the importance of operational risk management controls has been highlighted by the multi-billion dollar losses experienced by several large financial firms. These losses were caused by unauthorized and undisclosed employee trading. In each case, these losses went virtually undetected by management because of the lack of basic internal controls, including the separation of responsibility for recording the trades on the firms' books from the personnel responsible for trading.

Risk management controls within financial institutions promote the stability of these firms and, consequently, the stability of the entire financial system. They do this by reducing the risk of significant losses by a firm, which also reduces the risk that spreading losses would cause multiple defaults and undermine markets as a whole. Specifically, internal risk management controls promote stability by providing two important functions: (1) Protecting against firm specific risk such as operational, market, credit, legal, and liquidity risks; and (2) protecting the financial industry from systemic risk.[77]

The specific elements of a risk management system will vary depending on the size and complexity of a firm's business operations. As a result, the design and implementation of a system of internal controls for a particular firm should reflect the circumstances of the firm. Any well-developed risk management system, however, should include a risk management strategy, policies and procedures to accomplish that strategy, risk measurement methodologies, compliance monitoring and reporting, and on-going assessment of the effectiveness of the strategies, policies, and procedures.

The Commission recognizes that an individual firm must have the flexibility to implement specific policies and procedures unique to its circumstances. As a result, proposed Rule 15c3–4 would establish only basic elements for the design, implementation, and review of an OTC derivatives dealer's risk management control system. These elements are designed to ensure the integrity of the risk management process, to clarify that the appropriate level of management is authorizing the types of activity that can be conducted and the level of risk that can be assumed, and to ensure that the OTC derivatives dealer reviews its activities for consistency with risk management guidelines.

The proposed rule would require an OTC derivatives dealer to assess a number of aspects about its business environment when creating its risk management control system. This assessment is designed to ensure that the system implemented is appropriate for the individual firm. For example, an OTC derivatives dealer would need to consider the sophistication and experience of relevant trading, risk management, and internal audit personnel, as well as the management philosophy and culture of the firm.

Despite the need for firms to develop controls appropriate to their specific circumstances, the proposed rule would also require certain elements to be included in OTC derivatives dealers' internal control systems. These elements ensure that internal control systems protect against risks that are universal to the business of OTC derivatives dealers. For example, the unit at the firm responsible for monitoring risk must be separate from and senior to the trading units whose activity create the risks. This is to ensure the independence of the risk management process. In addition, personnel responsible for recording transactions in the books of the OTC derivatives dealer cannot be the same as those responsible for executing transactions. This is to ensure that trading losses cannot be hidden.

Finally, the OTC derivatives dealer's management must periodically review the firm's business activities for consistency with established risk management guidelines. This will ensure that personnel are operating within the scope of permissible activity and that the risk management system will continue to be adequate.

4. Proposed Rule 17a–12; Reports To Be Made by OTC Derivatives Dealers

Exchange Act Rule 17a–5[78] requires all broker-dealers to file various reports with the Commission. These reports include periodic Financial Operational Combined Uniform Single Reports (FOCUS),[79] annual audited financial statements, and designations of accountant. Under proposed Rule 17a–12, similar periodic requirements would be put into place for OTC derivatives dealers.

Proposed Rule 17a–12 would require OTC derivatives dealers to file quarterly FOCUS reports, and to include in these filings the enhanced reporting information and the evaluation of risk in relation to capital provisions of the Framework for Voluntary Oversight of the Derivatives Policy Group (''DPG'').[80] The DPG credit and market risk information (Schedules I–V and VI of the proposed FOCUS report) are intended to enable the Commission to ascertain the nature and scope of a firm's OTC derivatives activity and to monitor the firm's risk exposure.

Proposed Rule 17a–12 would also require the OTC derivatives dealer to file annually its audited financial statements along with a corresponding audit report. Among other things, the annual audit report would include a statement of financial condition, a statement of income, a statement of cash flows, a statement of changes in owners' equity, and a statement of changes in subordinated liabilities. The proposed rule establishes guidelines for the content and form of the annual report, accountant qualifications, the process for designating an accountant, and audit objectives.

Each of the reports required under proposed Rule 17a–12 would assist the Commission to monitor the operations

[77] Systemic risk encompasses the risk that the failure of one firm or within one market segment would trigger failures in other market segments or throughout the financial markets as a whole.

[78] 17 CFR 240.17a–5. Rule 17a–5 was adopted by the Commission pursuant to authority under Section 17 of the Exchange Act [15 U.S.C. 78q], and particularly Section 17(e) [15 U.S.C. 78q(e)], which requires every broker or dealer to file annually with the Commission a certified balance sheet and income statement, and such other information concerning its financial condition as the Commission may prescribe.

[79] Form X–17A–5 [17 CFR 249.617].

[80] See Framework for Voluntary Oversight, Derivatives Policy Group (Mar. 1995). The firms comprising the DPG consist of the six U.S. broker-dealers with the largest OTC derivatives affiliates. This group was organized to respond to the public policy interests of Congress, federal agencies, and others in the OTC derivatives activities of unregulated affiliates of SEC-registered broker-dealers and CFTC-registered futures commission merchants. The Framework for Voluntary Oversight specifies certain information that the members of the DPG have voluntarily agreed to submit regarding their OTC derivatives activities and establishes certain internal control principles that group members should follow.

of OTC derivatives dealers and to enforce their compliance with the Commission's rules. These reports would also enable the Commission to review the business activities of OTC derivatives dealers and to anticipate, where possible, how these dealers may be affected by significant economic events.

5. Proposed Amendments to Form X–17A–5

Proposed Rule 17a–12 would require that certain conforming changes be made to Rule 249.617 to require OTC derivatives dealers to file the appropriate parts of Form X–17A–5, commonly known as the FOCUS report. These changes would provide for appropriate disclosure of the business activities of OTC derivatives dealers and the risks associated with those activities.

Under the proposed amendments to Form X–17A–5, the net capital computation worksheet would be revised to reflect the proposed net capital requirements for OTC derivatives dealers. Other changes would include revising the statement of financial condition and the statement of income, and eliminating the customer reserve computation and commission income line items. OTC derivatives dealers would also be required to include certain information in the quarterly FOCUS filing. This information would include credit concentration information, together with a geographic breakdown and a counterparty breakdown as described in the DPG Framework for Voluntary Oversight. OTC derivatives dealers would also be required to provide, where applicable, a detailed summary of all long and short securities and commodities positions, including all OTC derivatives contracts.

By incorporating the DPG credit and market risk information into the FOCUS filing requirement for OTC derivatives dealers, the Commission would be able to ascertain the nature and scope of a firm's OTC derivatives activity and to monitor the firm's risk exposure. This information has been valuable to the Commission in understanding the OTC derivatives business of those firms already participating in the DPG Framework for Voluntary Oversight program.

III. General Requests for Comment

The Commission solicits comment on its proposal to establish a limited, optional regulatory system for OTC derivatives dealers. In particular, the Commission solicits comments on the extent to which persons eligible to become registered as OTC derivatives dealers believe this proposed system would address any competitive inequalities that discourage securities firms from conducting an OTC derivatives business in the United States. The Commission also solicits comments on this proposal from derivatives counterparties and other interested participants in global financial markets. In addition, commenters are requested to express their views on the application of the Commission's broker-dealer rules to OTC derivatives dealers and whether additional amendments or exemptions would be needed for this class of dealers. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is also requesting information regarding the potential impact of the proposed rules on the national economy on an annual basis. Commenters should provide empirical data to support their views.

IV. Costs and Benefits of the Proposed Rules and Rule Amendments

To assist the Commission in its evaluation of the costs and benefits that may result from the proposed limited regulatory system for OTC derivatives dealers, commenters are requested to provide analysis and data relating to the costs and benefits associated with the proposals. In particular, the Commission requests comments on the potential costs for any necessary modifications to accounting, information management, and recordkeeping systems required to implement the proposed rules and rule amendments and the potential benefits arising from participation in the regulatory scheme.

The Commission has identified certain costs and benefits that would be associated with the proposed regulatory system for OTC derivatives dealers. This proposed system would be optional and is designed to allow U.S. securities firms to establish separate OTC derivatives dealer affiliates capable of acting as counterparties with respect to both securities and non-securities OTC derivative products. Capital, margin, and other broker-dealer regulatory requirements would be tailored to the activities of these entities. Registration as an OTC derivatives dealer would be an alternative to registration as a fully regulated broker-dealer under Section 15(b) of the Exchange Act for firms combining a business in securities and non-securities OTC derivative products, and would be available only to entities acting primarily as counterparties in privately negotiated OTC derivatives transactions.

It is expected that firms electing to become registered as OTC derivatives dealers would be able to conduct business more efficiently and at lower cost than under current Commission rules. This would allow OTC derivatives dealers to compete more effectively against banks and foreign dealers in OTC derivatives markets. The Commission expects that the benefits to OTC derivatives dealers of being able to compete more effectively in global derivatives markets at a lower cost would outweigh the potential cost of this limited regulation.

Cost savings would result in several areas. First, firms that currently conduct securities OTC derivatives activities from registered broker-dealers and non-securities OTC derivatives activities from separate, unregistered entities, would be able to combine these activities in one OTC derivatives dealer. This combination of operations in one entity would result in a decrease in operational costs. There would also be a decrease in regulatory costs. OTC derivatives dealers that register with the Commission would become subject to tailored capital and other requirements that are intended to impose lesser regulatory burdens than are imposed on fully regulated broker-dealers. In addition, OTC derivatives dealers would be exempted from the margin requirements of Section 7 and Regulation T, provided these dealers comply with the margin requirements of Regulation U. Applying Regulation U to extensions of credit by OTC derivatives dealers would allow them to extend credit on the broader range of securities OTC derivatives products that make up their business.

The Commission preliminary believes that the proposed rules and rule amendments would promote both efficiency and capital formation. The proposed rules and rule amendments should provide broker-dealers the opportunity to increase operational efficiency by reducing the need to fractionalize their OTC derivatives business. The Commission, however, solicits comment on whether the proposal would promote both efficiency and capital formation.

The proposed limited regulatory system for OTC derivatives dealers would also result in benefits to regulators and to financial markets. First, OTC derivatives dealers that register with the Commission would be subject to the proposed net capital requirements and other financial responsibility requirements for OTC derivatives dealers. These are intended

to ensure against excessive leverage and the risks associated with conducting an OTC derivatives business, and to provide a cushion of capital against market declines and other risks. Second, Commission oversight authority, including proposed reporting and notice requirements, would enable the Commission to monitor the financial condition and securities activities of OTC derivatives dealers. Third, proposed internal risk management control systems are intended to promote the financial responsibility of OTC derivatives dealers to the extent they have elected to do business through this type of broker-dealer. By reducing the risk of significant losses by a single firm, internal risk management control systems would also reduce the risk that the problems of one firm would spread, causing defaults by other firms and undermining securities markets as a whole.

Firms electing to register as OTC derivatives dealers would incur various costs. As a preliminary matter, there may be costs associated with combining activities currently conducted in a registered broker-dealer with activities conducted in other unregistered entities. These firms would incur the one-time and on-going costs of registration as an OTC derivatives dealer. These firms would also have the one-time and on-going costs of making adjustments to risk management practices to conform with proposed Rule 15c3–4, and of maintaining capital required by proposed Appendix F to the net capital rule. In addition, these firms would have the one-time and on-going costs of complying with the books and records requirements under proposed amendments to Rules 17a–3 and 17a–4. OTC derivatives dealers would incur costs associated with preparing and submitting FOCUS reports and annual audited financial statements. This would include the cost of contracting with a certified public accountant to conduct an annual audit. Moreover, while OTC derivatives dealers would be exempted from the more restrictive margin requirements of Regulation T, the dealers would have the one-time and on-going costs associated with complying with the margin requirements of Regulation U, including the costs of developing systems for compliance and the costs associated with subjecting currently unregulated offshore activities to Regulation U.

V. The Effects on Competition of the Proposed Rules and Rule Amendments

Section 23(a)(2) of the Exchange Act [81] requires the Commission, in adopting rules under the Exchange Act, to consider the impact any rule would have on competition and to not adopt any rule that would impose a burden on competition not necessary or appropriate in the public interest. The Commission's preliminary view is that the proposed rules for OTC derivatives dealers would not have any anticompetitive effects. These rules are intended to remove substantial regulatory and economic barriers that impede the ability of U.S. securities firms to compete effectively in global securities markets. In particular, by providing OTC derivatives dealers with relief from certain provisions of the federal securities laws, these rules would put U.S. securities firms on a level footing with their bank and foreign dealer competitors.

As discussed above, the limited regulatory system for OTC derivatives dealers would be optional, and would be an alternative to regulation as a fully regulated broker-dealer. OTC derivatives dealers that elect to register with the Commission in order to conduct both securities and non-securities OTC derivatives transactions in a single entity would be subject to modified capital, margin, and other regulatory requirements. Because of the substantial minimum capital requirements that would be imposed on OTC derivatives dealers, regulation as an OTC derivatives dealer would be available only to large, well-capitalized firms.

In general, major dealers in OTC derivatives markets include the largest, highest capitalized banks and securities firms. It is possible, however, that there may be smaller firms participating in these markets that could not satisfy the minimum capital requirements for OTC derivatives dealers and, as a result, not be able to take advantage of the competitive benefits available under the proposed rules. Nevertheless, these minimum capital requirements for OTC derivatives dealers are necessary to ensure against excessive leverage and the risks associated with conducting an OTC derivatives business, and to provide a cushion of capital against severe market disturbances. The Commission requests comment on the competitive benefits to OTC derivatives dealers that may result under the proposed rules. The Commission also requests comment on any anticompetitive effects that may result under the proposed rules.

VI. Summary of Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with 5 U.S.C. 603 regarding proposed rules and rule amendments under the Exchange Act that would tailor capital, margin, and other broker-dealer regulatory requirements to the activities of OTC derivatives dealers. The following summarizes the IRFA.

The proposed rules and rule amendments are intended to improve the efficiency and competitiveness of U.S. securities firms participating in global OTC derivatives markets. These improvements would be realized through a limited regulatory structure that is intended to be deregulatory and to impose fewer costs on firms conducting an OTC derivatives business than would be imposed under the Commission's current rules. In particular, the application of revised capital requirements and an exemption from the margin provisions of Section 7 of the Exchange Act [82] are expected to make it feasible for firms to conduct a business involving both securities and non-securities OTC derivative products within the United States.

A broker-dealer (including any person that would be an OTC derivatives dealer) generally would be considered a small entity if (i) it has total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) or, if not required to file such statements, a broker-dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (ii) it is not affiliated with any person (other than a natural person) that is not a small business or small organization.[83]

Under the proposed amendments to Rule 15c3–1, OTC derivatives dealers would be required to maintain at least $100 million in tentative net capital and at least $20 million in regulatory net capital. Based on these minimum capital requirements, the IRFA notes that no OTC derivatives dealer would be considered a small entity. Major dealers in OTC derivatives markets tend to be the largest, highest-capitalized banks and securities firms. The proposed capital requirements have been tailored

[81] 15 U.S.C. 78w(a)(2).

[82] 15 U.S.C. 78g.

[83] Exchange Act Rule 0–10 [17 CFR 240.0–10].

to this market and are necessary to ensure against excessive leverage and the risks associated with conducting an OTC derivatives business, as well as to provide for a cushion of capital against severe market disturbances. The Commission is not aware of any small entities that are active as dealers in OTC derivatives markets. In the IRFA, the Commission requests comment on whether there are small entities that act as dealers in OTC derivatives markets, and what effect, if any, the proposed rules and rule amendments would have on their activities.

The Commission also requests comment from persons acting as counterparties in transactions with persons eligible to become registered as OTC derivatives dealers. Under proposed Rule 3b–14, the term ''permissible derivatives counterparty'' would include a range of financial institutions, corporations, and other institutional entities with whom OTC derivatives dealers would be permitted to enter into OTC derivatives transactions. Like OTC derivatives dealers, these institutional counterparties are frequently large, well-capitalized entities. The proposed definition may include potential counterparties that would be considered small entities for purposes of the Regulatory Flexibility Act (''RFA'').[84]

The proposed definition would include various classes of persons, such as banks, trust companies, saving associations, credit unions, insurance companies, investment companies, broker-dealers, commodity pools, futures commission merchants, and governmental entities, without regard to any minimum financial requirements. The Commission requests comment regarding the participation of these classes of persons in OTC derivatives markets, whether any of them would be considered small entities, and what effect, if any, the proposed rules and rule amendments would have on their activities.

The proposed definition would also include classes of persons, such as corporations, partnerships, trusts, and employee benefit plans, that would have minimum financial requirements for being considered a permissible derivatives counterparty. In the case of corporations, partnerships, trusts, and certain other entities described in the proposed definition, any such entity would be required to have total assets exceeding $10 million, have obligations under the terms of an OTC derivatives transaction that are guaranteed by certain classes of persons described in the rule, or a net worth of $1 million if it enters into OTC derivatives transactions in connection with the conduct of its business. Employee benefit plans would be required to have total assets exceeding $5 million. Alternatively, employee benefit plans would satisfy the definition if its investment decisions are made by a bank, trust company, insurance company, investment adviser, or commodity trading advisor subject to regulation by the Commodity Futures Trading Commission.

Some of these entities, despite minimum financial requirements, may be considered small entities for purposes of the RFA. The Commission requests comment regarding the participation of these classes of persons in OTC derivatives markets. Commenters should address whether any of these potential participants in OTC derivatives markets are likely to be small entities, and what effect, if any, the proposed rules and rule amendments would have on their activities. The Commission also requests comment from small entities that would not be able to satisfy the definition of permissible derivatives counterparty and, therefore, would not be eligible to engage in transactions with OTC derivatives dealers. Commenters should indicate what effect, if any, the proposed rules and rule amendments would have on their activities.

As explained in the IRFA, none of the recordkeeping, reporting, or other compliance requirements under the proposed rules and rule amendments are expected to be unduly burdensome. Under the proposed amendments to Rule 15c3–1, the Commission would allow OTC derivatives dealers to use VAR models to calculate their net capital requirements. Although many dealers active in OTC derivatives markets already use VAR models, OTC derivatives dealers would be required to bring their use of models into compliance with the requirements of proposed Rule 15c3–1.

OTC derivatives dealers would also be exempted under proposed Rule 36a1–1 from the provisions of Section 7 of the Exchange Act, provided they comply with other federal margin requirements applicable to non-broker-dealer lenders. This exemption is intended to be deregulatory and to allow OTC derivatives dealers greater flexibility by allowing them to extend credit on securities other than ''margin stock,'' including securities OTC derivative instruments. These OTC derivative dealers, however, would be required to implement systems for complying with the margin requirements applicable to their business.

Under the proposed amendments to Rules 17a–3, 17a–4, 17a–11, proposed Rule 17a–12, and proposed revisions to Form X–17A–5 (FOCUS report), OTC derivatives dealers would be required to maintain certain records regarding their OTC derivatives transactions, and to provide certain information to the Commission regarding their financial condition and operations. Any new requirements under these proposed rules and rule amendments would supplement current requirements that apply to fully regulated broker-dealers. Compliance with these requirements would require modification of the existing recordkeeping systems of dealers that become registered as OTC derivatives dealers.

Under proposed Rule 15c3–4, OTC derivatives dealers would be required to maintain internal risk management controls. In general, dealers in OTC derivatives markets already maintain and follow internal risk management controls. Under proposed Rule 15c3–4, OTC derivatives dealers would be required to modify their existing controls systems to the requirements under the rule. It is also expected that OTC derivatives dealers that elect to register with the Commission under the proposed amendments to Rule 15b1–1 would maintain general policies and procedures designed to promote compliance with the Commission rules, including compliance with the restrictions on the activities of OTC derivatives dealers described in proposed Rule 15a–1.

As noted in the IRFA, the Commission requests comment on the costs of coming into compliance with the recordkeeping, reporting, and other requirements under the proposed rules and rule amendments, and whether there would be any on-going costs associated with complying with the rules and rule amendments. Commenters should provide detailed estimates of these costs. The IRFA also notes that none of the recordkeeping, reporting, or other compliance requirements under the proposed rules and rule amendments are expected to apply to counterparties that enter into transactions with OTC derivatives dealers. The Commission, however, requests comment regarding the participation of small entities as counterparties in OTC derivatives markets, and what counterparty costs, if any, may be associated with the obligations of OTC derivatives dealers to comply with the proposed rules and rule amendments.

[84] 5 U.S.C. 601 *et seq.*

As discussed further in the IRFA, the Commission has considered alternatives to the proposed rules and rule amendments that would accomplish the stated objectives of improving the efficiency and competitiveness of U.S. securities firms participating in global OTC derivatives markets, and making it feasible for these firms to conduct a business involving securities and non-securities OTC derivative products within the United States. The proposed rules and rule amendments accomplish these objectives by tailoring capital, margin, and other regulatory requirements to the activities of OTC derivatives dealers. The proposed capital requirements, in particular, provide OTC derivatives dealers with significant alternatives for computing risk charges. These requirements do this, while also being intended to ensure against excessive leverage and risk, and to provide a cushion of capital against severe market disturbances. Improved competition and efficiency should benefit participants in OTC derivatives markets.

As noted in the IRFA, the Commission is encouraging the submission of written comments with respect to any aspect of the IRFA. Comment specifically is requested whether any small entities would be affected by the proposed rules and rule amendments, the costs of compliance with the proposed rules and rule amendments, and suggested alternatives that would accomplish the objectives of the proposed rules and rule amendments. After receipt of any comments from interested persons and preliminary evaluation of the possible compliance costs and effects upon competition, it may be appropriate to conclude, and for the Chairman of the Commission to certify, that the proposal does not have a significant economic impact on a substantial number of small entities. Comments received will also be considered in the preparation, if required, of a Final Regulatory Flexibility Analysis if the proposed rules and rule amendments are adopted. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is also requesting information regarding the potential impact of the proposed rules and rule amendments on the economy on an annual basis. Commenters should provide empirical data to support their views. A copy of the IRFA may be obtained by contacting Glenn J. Jessee, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 7–11, Washington, D.C. 20549.

VII. Paperwork Reduction Act

Certain provisions of the proposed rules and rule amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. § 3501 *et seq.*). The Commission has submitted them to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections of information are: (1) Appendix F to Rule 15c3–1, Optional Market and Credit Risk Requirements for OTC Derivatives Dealers; (2) Rule 15c3–4 Internal Risk Management Control Systems for OTC Derivatives Dealers (New Rule); (3) Rule 17a–3 Records to be Made by Certain Exchange Members, Brokers and Dealers (OMB Control Number 3235–0033); and (4) Rule 17a–12 Reports to be Made by OTC Derivatives Dealers (New Rule).

The Commission proposes to implement a limited regulatory system under the Exchange Act for OTC derivatives dealers. Under the proposed regulatory structure, OTC derivatives dealers would be permitted to act primarily as counterparties with respect to certain types of securities and non-securities OTC derivative instruments, and to issue and reacquire issued securities, without being required to comply with the full range of capital, margin, and other regulatory requirements applicable to other registered broker-dealers.

The collection of information obligations imposed by the proposed rules and rule amendments would be mandatory. However, it is important to note that registration as an OTC derivatives dealer would be voluntary. The information collected, retained, and/or filed pursuant to the proposed rules and rule amendments would be kept confidential to the extent permitted by the Freedom of Information Act [5 U.S.C. 552 *et seq.*]. An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid OMB control number.

A. Appendix F to Rule 15c3–1, Optional Market and Credit Risk Requirements for OTC Derivatives Dealers

Rule 15c3–1 requires broker-dealers to maintain minimum levels of net capital computed in accordance with the rule's provisions. The net capital reserves are intended to ensure that broker-dealers have sufficient capital to protect the assets of customers and to meet their responsibilities to other broker-dealers. The Commission is proposing to add Appendix F to the rule to provide an alternative net capital requirement and method for determining net capital for OTC derivatives dealers.

Under proposed Appendix F's alternative method for determining net capital requirements, an OTC derivatives dealer would be permitted to use a VAR model to calculate its net capital requirements. The OTC derivatives dealer would be required to send notice to the Commission describing its VAR model, including whether the firm has developed its own model and how the qualitative and quantitative aspects of Appendix F of the rule are incorporated into the model. In addition to developing and submitting a notice describing its model, an OTC derivatives dealer would be required to maintain its model according to certain prescribed standards. Maintenance of the model would require an OTC derivatives dealer to create and maintain certain information and periodically adjust the model. For example, the OTC derivatives dealer would be required to conduct backtesting by comparing each of its most recent 250 business days' actual net trading profit or loss with the corresponding daily VAR measures. Finally, the OTC derivatives dealer would be required to submit a description of its risk management control system implemented pursuant to proposed Rule 15c3–4.

Proposed Appendix F would help to ensure that OTC derivatives dealers would be able to meet their financial obligations and would facilitate the monitoring of the financial condition of OTC derivatives dealers by the Commission. Failure to require the current and proposed collections of information would undermine the safety and soundness of OTC derivatives dealers and the securities markets.

It is anticipated that Appendix F would affect approximately six OTC derivatives dealers. However, it is possible that more than ten OTC derivatives dealers would be affected. It is anticipated that the six affected OTC derivatives dealers would each spend an average of approximately 1,000 hours developing and submitting their VAR model and the description of their risk management control system to the Commission. In addition, these OTC derivatives dealers would spend annually, an average of approximately 1,000 hours each maintaining the model. Consequently, the total initial burden is estimated to be 6,000 hours and the total annual burden is estimated to be 6,000 hours. The estimates of the initial and annual burdens are based on discussions with potential respondents. The retention period for any

recordkeeping requirement under the rule would be three years.

B. Proposed Rule 15c3–4

Proposed Rule 15c3–4 would establish basic elements governing the creation, execution, and review of a firm's risk management control system. These elements are designed to ensure the integrity of the risk measurement, monitoring, and management process, and to clarify accountability, at the appropriate organizational level, for defining the permitted scope of activity and level of risk.

The proposed rule would require an OTC derivatives dealer to consider a number of issues affecting its business environment when creating its risk management control system. For example, an OTC derivatives dealer would need to consider, among other things, the sophistication and experience of relevant trading, risk management, and internal audit personnel, as well as the separation of duties among these personnel, when designing and implementing its internal control system's guidelines, policies, and procedures. This would help to ensure that the control system that is implemented would adequately address the risks posed by the firm's business and the environment in which it is being conducted. In addition, this would enable an OTC derivatives dealer to implement specific policies and procedures unique to its circumstances.

In implementing its policies and procedures, an OTC derivatives dealer would be required to document and record its system of internal risk management controls. In particular, an OTC derivatives dealer would be required to document its consideration of certain issues affecting its business when designing its internal controls. An OTC derivatives dealer would also be required to prepare and maintain written guidelines that discuss its internal control system, including procedures for determining the scope of authorized activities.

The proposed rule would be an integral part of the Commission's financial responsibility program for OTC derivatives dealers. The information to be collected under proposed Rule 15c3–4 would be essential to the regulation and oversight of OTC derivatives dealers and their compliance with the Commission's proposed financial responsibility requirements. More specifically, requiring an OTC derivatives dealer to document the planning, implementation, and periodic review of its risk management controls would ensure that all pertinent issues are considered, that the risk management controls are implemented properly, and that they continue to adequately address the risks faced by OTC derivatives dealers.

It is anticipated that the proposed rule would affect approximately six OTC derivatives dealers. However, it is possible that more than ten OTC derivatives dealers would be affected. It is estimated that the average amount of time a firm would spend implementing its risk management control system would be 2,000 hours. On average, it is expected that an OTC derivatives dealer would spend approximately 200 hours each year reviewing and updating its risk management control system. The total initial burden for all OTC derivatives dealers would be 12,000 hours and the annual burden would be 1,200 hours. The estimates of the initial and annual burdens are based on discussions with potential respondents. The retention period for the recordkeeping requirement under the rule would be three years.

C. Proposed Amendments to Rule 17a–3.

OTC derivatives dealers, like other broker-dealers that are registered with the Commission, would be required to comply with the books and records requirements of Exchange Act Rule 17a–3.[85] In general, Rule 17a–3 requires broker-dealers to make records concerning the purchases and sales of securities, receipts and deliveries of securities, and receipts and disbursements of cash. As part of the limited regulatory system for OTC derivatives dealers, the Commission proposes to amend Rule 17a–3 to reflect the business conducted by OTC derivatives dealers.[86] In particular, Rule 17a–3(a)(10) would be amended to require OTC derivatives dealers to compile a register of all transactions in eligible OTC derivative instruments. Currently, Rule 17a–3(a)(10) requires broker-dealers to make a record of all securities puts, calls, spreads, straddles, and other options in which a member, broker, or dealer has any direct or indirect interest, but does not address other types of OTC transactions.

Rule 17a–3 is an important part of the Commission's financial responsibility program for broker-dealers. The information required to be preserved under the proposed amendment of the rule would be used by representatives of the Commission and the examining authority responsible for reviewing the activities of the OTC derivatives dealer pursuant to proposed Rule 15b9–2 to ensure that OTC derivatives dealers would be in compliance with applicable Commission rules.

It is anticipated that the proposed rule amendment would affect approximately six OTC derivatives dealers. However, it is possible that more than ten OTC derivatives dealers would be affected. The current estimate of the time required to comply with the existing provisions of Rule 17a–3 is one hour per broker-dealer per working day. It is expected that any additional burden under the proposed rule amendment would be minimal because the information that would be called for under the proposed amendment to the rule is information a prudent OTC derivatives dealer would already maintain during the ordinary course of its business. The proposed amendment to Rule 17a–3 would require each of the six affected OTC derivatives dealers to spend approximately 52 hours per year collecting the required information. Thus, the Commission estimates that complying with the proposed amendment to Rule 17a–3 would require an additional 312 hours per year (52 hours per year multiplied by six affected OTC derivatives dealers). The estimates of the initial and annual burdens are based on discussions with potential respondents. The retention period for the recordkeeping requirements under the rule would be three years.

D. Proposed Rule 17a–12

Proposed Rule 17a–12 would establish the basic periodic reporting structure for OTC derivatives dealers. The proposed rule would require OTC derivatives dealers to file quarterly Financial and Operational Combined Uniform Single Reports (FOCUS).[87] OTC derivatives dealers would be required to include in these quarterly filings the enhanced reporting information and the evaluation of risk in relation to capital provisions of the DPG's Framework for Voluntary Oversight.[88] Finally, proposed Rule 17a–12 would require an OTC derivatives dealer to file annually its audited financial statements along with a corresponding audit report.

The proposed rule would be integral part of the Commission's financial responsibility program for OTC derivatives dealers. The information to

[85] 17 CFR 240.17a–3.

[86] The Commission is authorized by Sections 17(a) [15 U.S.C. 78q(a)] and 23(a) [15 U.S.C. 78w(a)] of the Exchange Act to promulgate rules and regulations regarding the maintenance and preservation of books and records of brokers-dealers.

[87] Form X–17A–5 [17 CFR 249.617].

[88] See Framework for Voluntary Oversight, Derivatives Policy Group (Mar. 1995).

be collected under proposed Rule 17a–12 would be essential to the regulation and oversight of OTC derivatives dealers and would assist the Commission and the examining authorities responsible for reviewing the activities of OTC derivatives dealers pursuant to proposed Rule 15b9–2 to monitor and enforce compliance with applicable Commission rules, including rules pertaining to financial responsibility. These FOCUS and annual reports would also be intended to be used to evaluate the activities conducted by OTC derivatives dealers and to anticipate, where possible, how these dealers could be affected by significant economic events.

It is anticipated that the proposed rule would affect approximately six OTC derivatives dealers. However, it is possible that more than ten OTC derivatives dealers would be affected. It is estimated that the average amount of time necessary to prepare and file the information required by the proposed rule would be 180 hours annually per OTC derivatives dealer. This is based upon an estimated average of four responses per year and an average of 20 hours spent preparing each response with an additional 100 hours spent on preparing the annual audit. This estimate of the annual burden is based on discussions with potential respondents. The retention period for the recordkeeping requirements under the rule would be three years.

E. Request for Comments

Written comments are invited on: (a) Whether the proposed collections of information would be necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; (b) the accuracy of the agency's estimates of the burdens of the proposed collections 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 collections of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 with reference to File No. S7–30–97. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VIII. Statutory Authority

The Commission is amending Title 17, Chapter II of the Code of Federal Regulations pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (particularly sections 3(b), 15(a), 15(b), 15(c), 17(a), 23, and 36 thereof (15 U.S.C. 78c(b), 78o(a), 78o(b), 78o(c), 78q(a), 78w, and 78mm)).

Text of Proposed Rule Amendments

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

17 CFR Parts 240 and 249

Broker-dealers, Reporting and recordkeeping requirements, Securities.

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for Part 200 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78ll(d), 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. Section 200.30–3 is amended by adding paragraph (a)(63) to read as follows:

§ 200.30–3(a)(63) Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(63) Pursuant to § 240.15a–1(a)(1)(iii) of this chapter, to designate by order other securities transactions in which an OTC derivatives dealer may engage.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The general authority citation for Part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

4. By adding §§ 240.3b–12 through 240.3b–16 to read as follows:

§ 240.3b–12 Definition of OTC derivatives dealer.

The term *OTC derivatives dealer* means any dealer that:

(a) Limits its securities activities to:

(1) Engaging as a counterparty in transactions in eligible OTC derivative instruments with permissible derivatives counterparties;

(2) Issuing and reacquiring issued securities, including warrants on securities, hybrid securities, and structured notes, through a registered broker or dealer (other than an OTC derivatives dealer); or

(3) Engaging in other securities transactions which the Commission designates by order pursuant to § 240.15a–1(a)(1)(iii); and

(b) In connection with the activities described in paragraph (a) of this section, engages in permissible risk management, arbitrage, and trading transactions.

§ 240.3b–13 Definition of eligible OTC derivative instrument.

The term *eligible OTC derivative instrument* means any agreement, contract, or transaction (or class thereof):

(a) That is not part of a fungible class of agreements, contracts, or transactions that are standardized as to their material economic terms;

(b) That is based, in whole or in part, on the value of, any interest in, any quantitative measure of, or the occurrence of any event relating to, one or more securities, commodities, currencies, interest or other rates, indices, or other assets, or that involves the purchase and sale of a security on a firm basis at least one year following the transaction date; and

(c) That is not entered into and traded on or through an exchange, an electronic marketplace, or similar facility supervised or regulated by the Commission, or any other multilateral transaction execution facility.

§ 240.3b–14 Definition of permissible derivatives counterparty.

The term *permissible derivatives counterparty* means, and shall be limited to, the following persons or classes of persons:

(a) A bank or trust company (acting on its own behalf or on behalf of another permissible derivatives counterparty);

(b) A savings association or credit union;

(c) An insurance company;

(d) An investment company or a foreign person performing a similar role or function subject as such to foreign regulation, *provided* that such investment company or foreign person

is not formed solely for the specific purpose of constituting a permissible derivatives counterparty;

(e) A commodity pool formed and operated by a person subject to regulation under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, *provided* that such commodity pool or foreign person is not formed solely for the specific purpose of constituting a permissible derivatives counterparty and has total assets exceeding $5 million;

(f) A corporation, partnership, proprietorship, organization, trust, or other entity not formed solely for the specific purpose of constituting a permissible derivatives counterparty:

(1) Which has total assets exceeding $10 million;

(2) The obligations of which under the terms of a transaction in eligible OTC derivative instruments are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity referenced in paragraph (f)(1) of this section or by an entity referred to in paragraphs (a), (b), (c), (d), (e), (f) or (h) of this section; or

(3) Which has a net worth of $1 million and enters into transactions in eligible OTC derivative instruments in connection with the conduct of its business, or which has a net worth of $1 million and enters into transactions in eligible OTC derivative instruments to manage the risk of an asset or liability owned or incurred in the conduct of its business or reasonably likely to be owned or incurred in the conduct of its business;

(g) An employee benefit plan subject to the Employee Retirement Income Security Act of 1974 or a foreign person performing a similar role or function subject as such to foreign regulation with total assets exceeding $5 million, or whose investment decisions are made by a bank, trust company, insurance company, investment adviser, or a commodity trading adviser subject to regulation under the Commodity Exchange Act;

(h) Any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any such entity;

(i) A broker, dealer, or a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf or on behalf of another permissible derivatives counterparty; *provided, however,* that if such broker or dealer (or foreign person) is a natural person or proprietorship, the broker or dealer (or foreign person) must also meet the requirements of either paragraph (f) or (k) of this section;

(j) A futures commission merchant, floor broker, or floor trader subject to regulation under the Commodity Exchange Act or a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf or on behalf of another permissible derivatives counterparty; *provided, however,* that if such futures commission merchant, floor broker, or floor trader (or foreign person) is a natural person or proprietorship, the futures commission merchant, floor broker, or floor trader (or foreign person) must also meet the requirements of paragraph (f) or (k) of this section; or

(k) Any natural person with total assets exceeding at least $10 million.

§ 240.3b–15 Definition of permissible risk management, arbitrage, and trading transaction.

The term *permissible risk management, arbitrage, and trading transaction* means, when used in connection with any transaction engaged in by, or effected on behalf of, an OTC derivatives dealer, a transaction involving:

(a) The taking possession of or selling of counterparty collateral;

(b) Cash management;

(c) Hedging an element of market or credit risk associated with one or more existing or anticipated transactions in eligible OTC derivative instruments or the issuance of securities, including warrants on securities, hybrid securities, or structured notes;

(d) Financing, through repurchase and reverse repurchase transactions, buy/sell transactions, and securities lending and borrowing transactions, a securities position that is acquired in connection with a transaction listed in paragraphs (a) through (c) of this section, or that is designated by the Commission pursuant to § 240.15a–1(a)(1)(iii);

(e) Arbitrage, provided that arbitrage involving securities shall be limited to arbitrage of a securities position that is acquired in connection with a transaction listed in paragraphs (a) through (c) of this section, or that is designated by the Commission pursuant to § 240.15a–1(a)(1)(iii); or

(f) Securities trading relating to a securities position that is acquired in connection with a transaction listed in paragraphs (a) through (c) of this section, *provided* that the number of any such transactions does not exceed 150 transactions in any calendar year, and provided further that the OTC derivatives dealer engaging in any such transaction maintains and enforces written policies and procedures reasonably designed to achieve compliance with the other provisions of this section.

§ 240.3b–16 Definition of hybrid security.

The term *hybrid security* shall mean a security that incorporates payment features economically similar to options, forwards, futures, swap agreements, or collars involving currencies, interest rates, commodities, securities, or indices (or any combination, permutation, or derivative of such contract or underlying interest).

5. Section 240.8c–1 is amended by revising paragraph (b)(1) to read as follows:

§ 240.8c1 Hypothecation of customers' securities.

* * * * *

(b) * * *

(1) The term *customer* shall not be deemed to include any general or special partner or any director or officer of such member, broker or dealer, or any participant, as such, in any joint, group or syndicate account with such member, broker or dealer or with any partner, officer or director thereof, or a permissible derivatives counterparty as defined in § 240.3b–14 who has delivered collateral pursuant to a transaction in an eligible OTC derivative instrument and who has consented to the unrestricted use of its collateral by an OTC derivatives dealer after receiving disclosure of the unrestricted use of the collateral;

* * * * *

6. By adding § 240.15a–1 under the undesignated center heading ''Exemption of Certain Securities From Section 15(a)'' to read as follows:

§ 240.15a–1 Transactions by OTC derivatives dealers.

(a) An OTC derivatives dealer shall not engage in any securities transaction other than:

(1)(i) Engaging as a counterparty in transactions in eligible OTC derivative instruments with permissible derivatives counterparties;

(ii) Issuing and reacquiring issued securities, including warrants on securities, hybrid securities, and structured notes, through a registered broker or dealer (other than an OTC derivatives dealer); or

(iii) Engaging in other securities transactions which the Commission designates by order; and

(2) In connection with the transactions described in paragraph

(a)(1) of this section, engaging in permissible risk management, arbitrage, and trading transactions.

(b) To the extent an OTC derivatives dealer engages in any securities transaction listed in paragraph (a) of this section, such transaction shall be effected through a registered broker or dealer other than an OTC derivatives dealer.

7. Section 240.15b1–1 is amended to revise paragraph (a) to read as follows:

§ 240.15b1–1 Application for registration of brokers or dealers.

(a) An application for registration of a broker or dealer that is filed pursuant to Section 15(b) of the Act (15 U.S.C. 78o(b)) shall be filed on Form BD (§ 249.501 of this chapter) in accordance with the instructions to the form. A broker or dealer that is an OTC derivatives dealer shall indicate where appropriate on Form BD that the type of business in which it is engaged is solely that of acting as an OTC derivatives dealer.

* * * * *

8. By adding § 240.15b9–2 under the underquoted center heading ''registration of brokers and dealers'' to read as follows:

§ 240.15b9–2 Exemption from SRO membership for OTC derivatives dealers.

Any broker or dealer required by Section 15(b)(8) of the Act (15 U.S.C. 78o(b)(8)) to become a member of a registered national securities association shall be exempt from such requirement, provided that:

(a) Such broker or dealer is an OTC derivatives dealer; and

(b) Such OTC derivatives dealer enters into an agreement with the examining authority designated pursuant to Section 17(d) of the Act (15 U.S.C. 78(q)(d)) for one or more of its affiliates that is a registered broker or dealer by which such examining authority agrees to conduct a review of such OTC derivatives dealer, report to the Commission any potential violation of applicable Commission rules, and evaluate the OTC derivatives dealer's procedures and controls designed to prevent violations of the Commission's rules.

9. Section 240.15c2–1 is amended to revise paragraph (b)(1) to read as follows:

§ 240.15c2–1 Hypothecation of customers' securities.

* * * * *

(b) * * *

(1) The term *customer* shall not be deemed to include any general or special partner or any director or officer of such broker or dealer, or any participant, as such, in any joint, group or syndicate account with such broker or dealer or with any partner, officer or director thereof, or a permissible derivatives counterparty as defined in § 240.3b–14 who has delivered collateral pursuant to a transaction in an eligible OTC derivative instrument and who has consented to the unrestricted use of its collateral by a OTC derivatives dealer after receiving disclosure of the unrestricted use of the collateral;

* * * * *

10. Section 240.15c3–1 is amended to add a sentence following the first sentence in the introductory text of paragraph (a); add paragraph (a)(5); redesignate paragraph (c)(12) as paragraph (c)(12)(i) and add paragraph (c)(12)(ii) and (c)(15) to read as follows:

§ 240.15c3–1 Net capital requirements for brokers or dealers.

(a) * * * In lieu of applying paragraphs (a)(1) and (a)(2) of this section, every dealer meeting the definition of an OTC derivatives dealer pursuant to § 240.3b–12 under the Securities Exchange Act of 1934 shall maintain net capital pursuant to paragraph (a)(5) of this section. * * *

* * * * *

(5) A dealer meeting the definition of an OTC derivatives dealer pursuant to § 240.3b–12 may elect not to apply the provisions of paragraph (c)(2)(vi) of this section to its securities, money market instruments, options, or eligible OTC derivative instruments and in lieu thereof apply the provisions in appendix F of this chapter (§ 240.15c3–1f). An OTC derivatives dealer shall at all times maintain tentative net capital of not less than $100 million and net capital of not less than $20 million.

* * * * *

(c) * * *

(12)(i) * * *

(ii) The term *examining authority* of an OTC derivatives dealer shall mean for the purposes of §§ 240.15c3–1 and 240.15c3–1a through d the examining authority responsible for conducting reviews of the OTC derivatives dealer pursuant to 240.15b9–2.

* * * * *

(15) The term *tentative net capital* shall mean the net capital of a broker or dealer before deducting the securities haircuts computed pursuant to paragraph (c)(2)(vi) of this section and the charges on inventory computed pursuant to appendix B of this chapter (§ 240.15c3–1b). However, for an OTC derivatives dealer electing to use appendix F of this chapter (§ 240.15c3–1f), the term ''tentative net capital'' shall mean the OTC derivatives dealer's net capital before deducting the charges for market and credit risk as computed pursuant to appendix F and increased by unrealized trading gains and unsecured receivables resulting from transactions in eligible OTC derivative instruments with permissible derivatives counterparties.

* * * * *

11. By adding Section 240.15c3–1f to read as follows:

§ 240.15c3–1f Optional Market and Credit Risk Requirements for OTC Derivatives Dealers (appendix F to 17 CFR 240.15c3–1).

(a) A dealer meeting the definition of an OTC derivatives dealer pursuant to § 240.3b–12 may elect to compute capital charges for market and credit risk pursuant to this appendix in place of computing securities haircuts pursuant to § 240.15c3–1(c)(2)(vi). A dealer may make this election by filing an application with the Commission stating whether the firm has developed its own model and describing the qualitative and quantitative aspects of its internal value-at-risk (''VAR'') model, which at a minimum must adhere to the criteria set forth in paragraph (d) of this appendix. The dealer's application shall also include a description of the risk management controls adopted pursuant to § 240.15c3–4.

Market Risk

(b) An OTC derivatives dealer electing to apply this appendix F shall compute a capital requirement for market risk using the Full Value-at-Risk Method or the Alternative Method as follows:

(1) *Full value-at-risk method*. An OTC derivatives dealer shall deduct from net worth an amount for market risk exposure for eligible OTC derivatives instruments and other positions in its proprietary or other accounts equal to the VAR of these positions obtained from its proprietary model, multiplied by the appropriate multiplication factor in paragraph (d)(1)(iv)(C) of this appendix. The model may not be used by the dealer for this purpose until the use of the model by the dealer has been authorized by the Commission.

(2) *Alternative method for equities*. An OTC derivatives dealer may choose to use the alternative method to calculate market risk for equity instruments, including OTC options, or if the Commission does not approve an OTC derivatives dealer's use of a VAR model for equity instruments, the OTC derivatives dealer using this appendix must use the alternative method. Under the alternative method, the deduction for market risk must be an amount equal to the largest theoretical loss calculated

in accordance with the theoretical pricing model set forth in appendix A of this section (§ 240.15c3–1a). The OTC derivatives dealer may use its own theoretical pricing model as long as it contains the minimum pricing factors set forth in appendix A.

Credit Risk

(c) The capital requirement for credit risk arising from its transactions in eligible OTC derivatives instruments shall be:

(1) The net replacement value in the account of the counterparty (including the effect of legally enforceable netting agreements and the application of liquid collateral) multiplied by 8% multiplied by the counterparty factor. The counterparty factors are:

(i) 20% for entities with ratings for senior unsecured long-term debt or commercial paper in the two highest rating categories by at least two nationally recognized statistical rating organizations (''NRSROs'');

(ii) 50% for entities with ratings for senior unsecured long-term debt in the third and fourth highest ratings categories by at least two NRSROs; and

(iii) 100% for entities with ratings for senior unsecured long-term debt below the four highest rating categories.

(2) The net replacement value in the account of the counterparty (including the effect of legally enforceable netting agreements and the application of liquid collateral) with senior unsecured long-term debt in default.

(3) A concentration charge calculated as follows:

(i) Where the net replacement value in the account of any one counterparty exceeds 25% of the OTC derivatives dealer's tentative net capital, it must deduct from net worth:

(A) For counterparties with ratings for senior unsecured long-term debt or commercial paper in the two highest rating categories by at least two NRSROs, 5% of the amount of the net replacement value in excess of 25% of the OTC derivatives dealer's tentative net capital;

(B) For counterparties with ratings for senior unsecured long-term debt in the third and fourth highest rating categories by at least two NRSROs, 20% of the amount of the net replacement value in excess of 25% of the OTC derivatives dealer's tentative net capital; and

(C) For counterparties with ratings for senior unsecured long-term debt below the four highest rating categories, 50% of the amount of the net replacement value in excess of 25% of the OTC derivatives dealer's tentative net capital; and

(ii) Where the aggregate of the net replacement values of all counterparties exceeds 300% of an OTC derivatives dealer's tentative net capital, it must deduct from net worth 100% of the amount of such excess.

(4) Counterparties that are not rated by an NRSRO may be rated by the OTC derivatives dealer upon demonstrating to the Commission that the OTC derivatives dealer uses ratings criteria equivalent to those used by NRSROs and that such ratings are current.

VAR Models

(d) An OTC derivatives dealer's VAR model must meet the following qualitative and quantitative requirements:

(1) *Qualitative requirements.* An OTC derivatives dealer electing to apply this appendix F must have a VAR model that meets the following minimum qualitative requirements:

(i) The OTC derivatives dealer's VAR model must be integrated into the firm's daily risk management process;

(ii) The OTC derivatives dealer must conduct appropriate stress tests of the VAR model, and develop procedures to follow in response to the results of such tests;

(iii) The OTC derivatives dealer must conduct periodic reviews (which may be performed by internal audit staff) of its VAR model. The OTC derivatives dealer's VAR model also must be subject to annual reviews conducted by independent public accountants;

(iv) The OTC derivatives dealer must conduct backtesting of the VAR model pursuant to the following procedures:

(A) Beginning one year after an OTC derivatives dealer starts to comply with this appendix, an OTC derivatives dealer must conduct backtesting by comparing each of its most recent 250 business days' actual net trading profit or loss with the corresponding daily VAR measures generated for determining market risk capital charges and calibrated to a one-day holding period and a 99 percent, one-tailed confidence level;

(B) Once each quarter, the OTC derivatives dealer must identify the number of exceptions, that is, the number of business days for which the actual daily net trading loss, if any, exceeded the corresponding daily VAR measure; and

(C) An OTC derivatives dealer must use the multiplication factor indicated in Table 1 of this appendix in determining its capital charge for market risk until it obtains the next quarter's backtesting results, unless the Commission determines that a different adjustment or other action is appropriate.

TABLE 1.—MULTIPLICATION FACTOR BASED ON RESULTS OF BACKTESTING

Number of exceptions	Multiplication factor
4 or fewer	3.00
5	3.40
6	3.50
7	3.65
8	3.75
9	3.85
10 or more	4.00

(2) *Quantitative requirements.* An OTC derivatives dealer electing to apply this Appendix F must have a VAR model that meets the following quantitative requirements:

(i) The VAR measures must be calculated on a daily basis using a 99 percent, one-tailed confidence level with a price change equivalent to a ten-business day movement in rates and prices;

(ii) The effective historical observation period for VAR measures must be at least one year, and the weighted average time lag of the individual observations cannot be less than six months. Historical data sets must be updated at least every three months and reassessed whenever market prices or volatilities are subject to large changes;

(iii) The VAR measures must include the risks arising from the non-linear price characteristics of options positions and the sensitivity of the market value of the positions to changes in the volatility of the underlying rates or prices. An OTC derivatives dealer must measure the volatility of options positions by different maturities;

(iv) The VAR measures may incorporate empirical correlations within and across risk categories, provided that the OTC derivatives dealer's process for measuring correlations is sound. In the event that the VAR measures do not incorporate empirical correlations across risk categories, then the OTC derivatives dealer must add the separate VAR measures for the four major risk categories in paragraph (d)(2)(v) of this appendix to determine its aggregate VAR measure; and

(v) The OTC derivatives dealer's VAR model must use risk factors sufficient to measure the market risk inherent in all covered positions. The risk factors must address interest rate risk, equity price risk, foreign exchange rate risk, and commodity price risk. For material exposures in the major currencies and

markets, modelling techniques must capture spread risk and must incorporate enough segments of the yield curve to capture differences in volatility and less than perfect correlation of rates along the yield curve. An OTC derivatives dealer must provide the Commission with evidence that the OTC derivatives dealer's VAR model takes account of specific risk in positions.

12. Section 240.15c3–3 is amended to revise paragraph (a)(1), and in paragraph (h) to revise the phrase ''§ 240.17a–5,'' to read ''§ 240.17a–5 or § 240.17a–12,''.

§ 240.15c3–3 Customer protection—reserves and custody of securities.

(a) * * *

(1) The term *customer* shall mean any person from whom or on whose behalf a broker or dealer has received or acquired or holds funds or securities for the account of that person. The term shall not include a broker or dealer, a municipal securities dealer, or a government securities broker or government securities dealer. The term shall not include general partners or directors or principal officers of the broker or dealer or any other person to the extent that person has a claim for property or funds which by contract, agreement or understanding, or by operation of law, is part of the capital of the broker or dealer or is subordinated to the claims of creditors of the broker or dealer. The term shall not include a permissible derivatives counterparty as defined in § 240.3b–14 who has delivered collateral pursuant to a transaction in an eligible OTC derivative instrument and who has consented to the unrestricted use of its collateral by an OTC derivatives dealer after receiving disclosure of the unrestricted use of the collateral. The term customer shall, however, include another broker or dealer to the extent that broker or dealer maintains an omnibus account for the account of customers with the broker or dealer in compliance with Regulation T (12 CFR part 220).

* * * * *

13. By adding § 240.15c3–4 to read as follows:

§ 240.15c3–4 Internal risk management control systems for OTC derivatives dealers.

(a) An OTC derivatives dealer shall establish and document a system of internal risk management controls to assist it to manage the risks associated with its business activities.

(b) An OTC derivatives dealer shall consider the following when adopting its internal control system guidelines, policies, and procedures:

(1) The ownership and governance structure of the OTC derivatives dealer;

(2) The composition of the governing body of the OTC derivatives dealer;

(3) The management philosophy and culture of the OTC derivatives dealer;

(4) The scope and nature of established risk management guidelines;

(5) The scope and nature of the permissible OTC derivatives activities;

(6) The sophistication and experience of relevant trading, risk management, and internal audit personnel;

(7) The sophistication and functionality of information and reporting systems; and

(8) The scope and frequency of monitoring, reporting, and auditing activities.

(c) An OTC derivatives dealer's internal risk management control system shall include the following elements:

(1) A risk control unit that reports directly to senior management and is independent from business trading units;

(2) Separation of duties between personnel responsible for entering into a transaction and those responsible for recording the transaction in the books and records of the OTC derivatives dealer;

(3) Periodic reviews (which may be performed by internal audit staff) and annual reviews (which must be conducted by independent public accountants) of the OTC derivatives dealer's risk management systems;

(4) Definitions of risk, risk monitoring, and risk management; and

(5) Written guidelines, approved by the OTC derivatives dealer's governing body, that include and discuss the following:

(i) The OTC derivatives dealer's consideration of the elements in paragraph (b) of this section;

(ii) The scope, and the procedures for determining the scope of authorized activities or any nonquantitative limitation on the scope of authorized activities;

(iii) Any quantitative guidelines for managing the OTC derivatives dealer's overall risk exposure;

(iv) The type, scope, and frequency of reporting by management on risk exposures;

(v) The procedures for and the timing of the governing body's periodic review of the risk monitoring and risk management written guidelines, systems, and processes;

(vi) The process for monitoring risk independent of the business or trading units whose activities create the risks being monitored;

(vii) The performance of risk management function by persons independent from or senior to the business or trading units whose activities create the risks;

(viii) The authority and resources of the groups or persons performing the risk monitoring and risk management functions;

(ix) The procedures governing the action management should take when internal risk management guidelines have been exceeded;

(x) The procedures to monitor and address the risk that an OTC derivative transaction contract will be unenforceable;

(xi) The procedures requiring the documentation of the principal terms of OTC derivatives transactions and other relevant information regarding such transactions; and

(xii) The procedures authorizing specified employees to commit the OTC derivatives dealer to particular types of transactions.

(d) Management must periodically review, in accordance with written procedures, the OTC derivatives dealer's business activities for consistency with risk management guidelines. Management must review the following:

(1) Whether risks arising from the OTC derivatives dealer's OTC derivatives activities are consistent with prescribed guidelines;

(2) Whether risk exposure guidelines for each business unit are appropriate for the business unit;

(3) Whether the data necessary to conduct the risk monitoring and risk management function as well as the valuation process over the OTC derivatives dealer's portfolio of products is accessible on a timely basis and information systems are available to capture, monitor, analyze, and report relevant data;

(4) Whether procedures are in place to enable management to take action when internal risk management guidelines have been exceeded;

(5) Whether procedures are in place to monitor and address the risk that an OTC derivative transaction contract will be unenforceable;

(6) Whether procedures are in place to identify and address any deficiencies in the operating systems and to contain the extent of losses arising from unidentified deficiencies;

(7) Whether procedures are in place to authorize specified employees to commit the OTC derivatives dealer to particular types of transactions, to specify any quantitative limits on such authority, and to provide for the oversight of their exercise of such authority;

(8) Whether procedures are in place to provide for adequate documentation of the principal terms of OTC derivatives transactions and other relevant information regarding such transactions;

(9) Whether personnel resources with appropriate expertise are committed to implementing the risk monitoring and risk management systems and processes; and

(10) Whether a mechanism is in place for periodic internal and external review of the risk monitoring and risk management functions.

14. Amend § 240.17a–3, in paragraph (a)(4)(vi) by revising the phrase ''Rule 17a–13 and Rule 17a–5 hereunder'' to read ''§§ 240.17a–13, 240.17a–5, and 240.17a–12'', and by adding a sentence to the end of paragraph (a)(10) to read as follows:

§ 240.17a–3 Records to be made by certain exchange members, brokers and dealers.

(a) * * *

(10) * * * An OTC derivatives dealer shall also keep a record of all eligible OTC derivative instruments as defined in § 240.3b–13 in which such OTC derivatives dealer has any direct or indirect interest or which such dealer has written or guaranteed, containing, at least, an identification of the security or other instrument and the number of units involved.

* * * * *

15. Amend § 240.17a–4 as follows:

a. In paragraph (b)(8) introductory text by revising the phrase ''Part IIA'' to read ''Part IIA or Part IIB'' and by revising the phrase ''§ 240.17a–5(i)(xv)'' to read ''§§ 240.17a–5(d) and 240.17a–12(b)'';

b. In paragraph (b)(8)(xv) by revising the phrase ''§ 240.17a–5'' to read ''§§ 240.17a–5 and 240.17a–12'';

c. By adding paragraph (b)(10) to read as follows:

d. In paragraph (f)(2)(i) by adding the phrase ''or its examining authority pursuant to § 240.15b9–2'' after the phrase ''(15 U.S.C. 78q(d))'' and by adding the phrase ''or its examining authority pursuant to § 240.15b9–2'' after the phrase ''designated examining authority'';

e. In paragraph (f)(2)(ii)(D) by adding the phrase '', the examining authority pursuant to § 240.15b9–2'' after the phrase ''by the Commission'';

f. In paragraphs (f)(3)(i), (f)(3)(iv)(A), (f)(3)(v)(A), and (f)(3)(vi) by adding the phrase '', its examining authority pursuant to § 240.15b9–2,'' after the phrase ''of the Commission''; and

g. In paragraph (f)(3)(vii) by adding the phrase ''its examining authority pursuant to § 240.15b9–2 or'' after the phrase ''shall file with''.

§ 240.17a–4 Records to be preserved by certain exchange members, brokers and dealers.

* * * * *

(b) * * *

(10) The records required to be made pursuant to § 240.15c3–4 and the results of the periodic reviews conducted pursuant to § 240.15c3–4(d).

* * * * *

16. Amend § 240.17a–11 by revising paragraph (b) and paragraph (c)(3) to read as follows; in paragraph (e) introductory text by adding the phrase ''or § 240.17a–12(f)(2)'' after the phrase ''240.17a–5(h)(2)'' and by adding the phrase ''or § 240.17a–12(e)(2)'' after the phrase ''240.17a–5(g)''; by revising paragraph (f) to read as follows; in paragraph (g) by adding the phrase ''the examining authority responsible for conducting reviews of an OTC derivatives dealer pursuant to § 240.15b9–2,'' after the phrase ''the designated examining authority of which such broker or dealer is a member,''; and in paragraph (h) by revising the phrase ''§ 240.15c3–3(i) and § 240.17a5–5(h)(2)'' to read ''§ 240.15c3–3(i), § 240.17a–5(h)(2), and § 240.17a–12(f)(2)''.

§ 240.17a–11 Notification provisions for brokers and dealers.

* * * * *

(b)(1) Every broker or dealer whose net capital declines below the minimum amount required pursuant to § 240.15c3–1 shall give notice of such deficiency that same day in accordance with paragraph (g) of this section. The notice shall specify the broker's or dealer's net capital requirement and its current amount of net capital. If a broker or dealer is informed by its designated examining authority, its examining authority pursuant to § 240.15b9–2, or the Commission that it is, or has been, in violation of § 240.15c3–1 and the broker or dealer has not given notice of the capital deficiency under this § 240.17a–11, the broker or dealer, even if it does not agree that it is, or has been, in violation of § 240.15c3–1, shall give notice of the claimed deficiency, which notice may specify the broker's or dealer's reasons for its disagreement.

(2) In addition to the requirements of paragraph (b)(1) of this section, an OTC derivatives dealer shall also provide notice if its tentative net capital falls below the minimum amount required pursuant to § 240.15c3–1. The notice shall specify the OTC derivatives dealer's net capital requirement, tentative net capital requirement, its current amount of net capital, and tentative net capital.

(c) * * *

(3) If a computation made by a broker or dealer pursuant to § 240.15c3–1 shows that its total net capital is less than 120 percent of the broker's or dealer's required minimum net capital. If a computation made by an OTC derivatives dealer pursuant to § 240.15c3–1 shows that its total tentative net capital is less than 120 percent of the dealer's required minimum tentative net capital.

* * * * *

(f) Every national securities exchange, national securities association, or examining authority responsible for conducting reviews of an OTC derivatives dealer pursuant to § 240.15b9–2 that learns that a member broker or dealer or an OTC derivatives dealer has failed to send notice or transmit a report required by paragraphs (b), (c), (d), or (e) of this section, even after being advised by the securities exchange, national securities association, or examining authority responsible for conducting reviews of an OTC derivatives dealer pursuant to § 240.15b9–2 to send notice or transmit a report, shall immediately give notice of such failure in accordance with paragraph (g) of this section.

* * * * *

17. By adding § 240.17a–12 to read as follows:

§ 240.17a–12 Reports to be made by certain OTC derivatives dealers.

(a) *Filing of quarterly reports.* (1) This paragraph (a) shall apply to every OTC derivatives dealer registered pursuant to Section 15 of the Act (15 U.S.C. 78o).

(i) Every OTC derivatives dealer shall file Part IIB of Form X–17A–5 (§ 249.617 of this chapter) within 17 business days after the end of each calendar quarter and within 17 business days after the date selected for the annual audit of financial statements where said date is other than the end of the calendar quarter.

(ii) Upon receiving from the Commission or the examining authority responsible for performing reviews of the OTC derivatives dealer pursuant to § 240.15b9–2 written notice that additional reporting is required, an OTC derivatives dealer shall file monthly, or at such times as shall be specified, Part IIB of Form X–17A–5 (§ 249.617 of this chapter) and such other financial or operational information as shall be required by the Commission or the examining authority responsible for performing reviews of the OTC derivatives dealer pursuant to § 240.15b9–2.

(2) The reports provided for in this paragraph (a) shall be considered filed when received at the Commission's

principal office in Washington, D.C., and at the principal office of the examining authority responsible for performing reviews of the OTC derivatives dealer pursuant to § 240.15b9–2. All reports filed pursuant to this paragraph (a) shall be deemed to be confidential.

(3) Upon written application by an OTC derivatives dealer to the examining authority responsible for performing reviews of the OTC derivatives dealer pursuant to § 240.15b9–2, the examining authority may extend the time for filing the information required by this paragraph (a). The examining authority for the OTC derivatives dealer shall maintain, in the manner prescribed in § 240.17a–1, a record of each extension granted.

(b) *Annual filing of audited financial statements.* (1)(i) Every OTC derivatives dealer registered pursuant to Section 15 of the Act (15 U.S.C. 78o) shall file annually, on a calendar or fiscal year basis, a report which shall be audited by an independent public accountant. Reports pursuant to this paragraph (b) shall be as of the same fixed or determinable date each year, unless a change is approved in writing by the examining authority responsible for performing reviews of the OTC derivatives dealer pursuant to § 240.15b9–2. A copy of such written approval shall be sent to the Commission's principal office in Washington, D.C.

(ii) An OTC derivatives dealer succeeding to and continuing the business of another OTC derivatives dealer need not file a report under this paragraph (b) as of a date in the fiscal or calendar year in which the succession occurs if the predecessor OTC derivatives dealer has filed a report in compliance with this paragraph (b) as of a date in such fiscal or calendar year.

(2) The annual audited report shall contain a Statement of Financial Condition (in a format and on a basis which is consistent with the total reported on the Statement of Financial Condition contained in Form X–17A–5 (§ 249.617 of this chapter), Part IIB, a Statement of Income, a Statement of Cash Flows, a Statement of Changes in Stockholders' or Partners' or Sole Proprietor's Equity, and Statement of Changes in Liabilities Subordinated to Claims of General Creditors. Such statements shall be in a format which is consistent with such statements as contained in Form X–17A–5 (§ 249.617 of this chapter), Part IIB. If the Statement of Financial Condition filed in accordance with instructions to Form X–17A–5 (§ 249.617 of this chapter), Part IIB, is not consolidated, a summary of financial data for subsidiaries not consolidated in the Part IIB Statement of Financial Condition as filed by the OTC derivatives dealer shall be included in the notes to the consolidated statement of financial condition reported on by the independent public accountant. The summary financial data shall include the assets, liabilities, and net worth or stockholders' equity of the unconsolidated subsidiaries.

(3) Supporting schedules shall include, from Part IIB of Form X–17A–5 (§ 249.617 of this chapter), a Computation of Net Capital under § 240.15c3–1.

(4) A reconciliation, including appropriate explanations, of the Computation of Net Capital under § 240.15c3–1 contained in the audit report with the broker's or dealer's corresponding unaudited most recent Part IIB filing shall be filed with the report when material differences exist. If no material differences exist, a statement so indicating shall be filed.

(5) The annual audit report shall be filed not more than sixty (60) days after the date of the financial statements.

(6) Two copies of the annual audit report shall be filed at the Commission's principal office in Washington, D.C., and the principal office of the examining authority responsible for performing reviews of the OTC derivatives dealer pursuant to § 240.15b9–2.

(c) *Nature and form of reports.* The financial statements filed pursuant to paragraph (b) of this section shall be prepared and filed in accordance with the following requirements:

(1) An audit shall be conducted by a public accountant who shall be in fact independent as defined in paragraph (f) of this section, and it shall give an opinion covering the statements filed pursuant to paragraph (b) of this section.

(2) Attached to the report shall be an oath or affirmation that, to the best knowledge and belief of the person making such oath or affirmation the financial statements and schedules are true and correct and neither the OTC derivatives dealer, nor any partner, officer, or director, as the case may be, has any significant interest in any counterparty or in any account classified solely as that of a counterparty. The oath or affirmation shall be made before a person duly authorized to administer such oaths or affirmations. If the OTC derivatives dealer is a sole proprietorship, the oath or affirmation shall be made by the proprietor; if a partnership, by a general partner; or if a corporation, by a duly authorized officer.

(3) All of the statements filed pursuant to paragraph (b) of this section shall be confidential except that they shall be available for use by any official or employee of the United States or by any other person to whom the Commission authorizes disclosure of such information as being in the public interest.

(d) *Qualification of accountants.* The Commission will not recognize any person as a certified public accountant who is not duly registered and in good standing as such under the laws of his place of residence or principal office. The Commission will not recognize any person as a public accountant who is not in good standing and entitled to practice as such under the laws of his place of residence or principal office.

(e) *Designation of accountant.* (1) Every OTC derivatives dealer shall file no later than December 10 of each year a statement with the Commission's principal office in Washington, D.C., and the principal office of the examining authority responsible for performing reviews of the OTC derivatives dealer pursuant to § 240.15b9–2. Such statement shall indicate the existence of an agreement dated no later than December 1, with an independent public accountant covering a contractual commitment to conduct the OTC derivatives dealer's annual audit during the following calendar year.

(2) The agreement may be of a continuing nature, providing for successive yearly audits, in which case no further filing is required. If the agreement is for a single audit, or if the continuing agreement previously filed has been terminated or amended, a new statement must be filed by the required date.

(3) The statement shall be headed ''Notice pursuant to § 240.17a–12(e)'' and shall contain the following information:

(i) Name, address, telephone number and registration number of the OTC derivatives dealer;

(ii) Name, address and telephone number of the accounting firm; and

(iii) The audit date of the OTC derivatives dealer for the year covered by the agreement.

(4) Notwithstanding the date of filing specified in paragraph (e)(1) of this section, every OTC derivatives dealer shall file the notice provided for in paragraph (e) of this section within 30 days following the effective date of registration as an OTC derivatives dealer.

(f) *Independence of accountant.* An accountant shall be independent in

accordance with the provisions of § 210.2–01(b) and (c) of this chapter.

(g) *Replacement of accountant.* (1) An OTC derivatives dealer shall file a notice that must be received by the Commission's principal office in Washington, D.C., and the principal office of the examining authority responsible for performing reviews of the OTC derivatives dealer pursuant to § 240.15b9–2 not more than 15 business days after:

(i) The OTC derivatives dealer has notified the accountant whose opinion covered the most recent financial statements filed under paragraph (b) of this section that the accountant's services will not be utilized in future engagements; or

(ii) The OTC derivatives dealer has notified an accountant who was engaged to give an opinion covering the financial statements to be filed under paragraph (b) of this section that the engagement has been terminated; or

(iii) An accountant has notified the OTC derivatives dealer that it would not continue under an engagement or give an opinion covering the financial statements to be filed under paragraph (b) of this section; or

(iv) A new accountant has been engaged to give an opinion covering the financial statements to be filed under paragraph (b) of this section without any notice of termination having been given to or by the previously engaged accountant.

(2) Such notice shall state the date of notification of the termination of the engagement or engagement of the new accountant as applicable and the details of any problems existing during the 24 months (or the period of the engagement, if less) preceding such termination or new engagement relating to any matter of accounting principles or practices, financial statement disclosure, auditing scope or procedure, or compliance with applicable rules of the Commission, which problems, if not resolved to the satisfaction of the former accountant, would have caused the former accountant to make reference to them in connection with the report on the subject matter of the problems. The problems required to be reported in response to the preceding sentence include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Problems contemplated by this section are those which occur at the decision making level—*i.e.*, between principal financial officers of the OTC derivatives dealer and personnel of the accounting firm responsible for rendering its report. The notice shall also state whether the accountant's report on the financial statements for any of the past two years contained an adverse opinion or a disclaimer of opinion or was qualified as to uncertainties, audit scope, or accounting principles, and describe the nature of each such adverse opinion, disclaimer of opinion, or qualification. The OTC derivatives dealer shall also request the former accountant to furnish the OTC derivatives dealer with a letter addressed to the Commission stating whether the former accountant agrees with the statements contained in the notice of the OTC derivatives dealer and, if not, stating the respects in which the former accountant does not agree. The OTC derivatives dealer shall file three copies of the notice and the accountant's letter, one copy of which shall be manually signed by the sole proprietor, or a general partner or a duly authorized corporate officer, as appropriate, and by the accountant, respectively.

(h) *Audit objectives.* (1) The audit shall be made in accordance with generally accepted auditing standards and shall include a review of the accounting system, the internal accounting control, internal management controls, and procedures for safeguarding securities including appropriate tests thereof for the period since the prior examination date. The audit shall include all procedures necessary under the circumstances to enable the independent public accountant to express an opinion on the statement of financial condition, results of operations, cash flows, and the Computation of Net Capital under § 240.15c3–1. The scope of the audit and review of the accounting system, the internal accounting controls, internal management controls, and procedures for safeguarding securities shall be sufficient to provide reasonable assurance that any material inadequacies existing at the date of the examination in the following are detected:

(i) The accounting system;

(ii) The internal accounting controls; and

(iii) Procedures for safeguarding securities.

(2) A material inadequacy in the accounting system, internal accounting controls, procedures for safeguarding securities, and practices and procedures referred to in paragraph (h) of this section which is expected to be reported under these audit objectives includes any condition which has contributed substantially to or, if appropriate corrective action is not taken, could reasonably be expected to:

(i) Inhibit an OTC derivatives dealer from promptly completing securities transactions or promptly discharging its responsibilities to counterparties, other brokers and dealers or creditors;

(ii) Result in material financial loss;

(iii) Result in material misstatements of the OTC derivatives dealer's financial statements;

(iv) Result in violations of the Commission's recordkeeping or financial responsibility rules to an extent that could reasonably be expected to result in the conditions described in paragraphs (h)(2)(i), (ii), or (iii) of this section; or

(v) Result in any matter that would be deemed a reportable condition under U.S. Generally Accepted Auditing Standards.

(i) *Extent and timing of audit procedures.* (1) The extent and timing of audit procedures are matters for the independent public accountant to determine on the basis of its review and evaluation of existing internal controls and other audit procedures performed in accordance with generally accepted auditing standards and the audit objectives set forth in paragraph (h) of this section. In determining the extent of testing, consideration shall be given to the materiality of an area and the possible effect on the financial statements and schedules of a material misstatement in a related account. The performance of auditing procedures involves the proper synchronization of their application and thus comprehends the need to consider simultaneous performance of procedures in certain areas such as, for example, securities counts, transfer verification, and customer and broker confirmation in connection with verification of securities positions.

(2) If, during the course of the audit or interim work, the independent public accountant determines that any material inadequacies exist in the accounting system, internal accounting control, procedures for safeguarding securities, or as otherwise defined in paragraph (h)(2) of this section, then the independent public accountant shall call it to the attention of the chief financial officer of the OTC derivatives dealer, who shall have a responsibility to inform the Commission and the examining authority responsible for performing reviews of the dealer pursuant to § 240.15b9–2 by telegraphic or facsimile notice within 24 hours thereafter as set forth in § 240.17a–11(e) and (g). The OTC derivatives dealer shall also furnish the accountant with a copy of said notice to the Commission by telegram or facsimile within said 24 hour period. If the accountant fails to

receive such notice from the OTC derivatives dealer within said 24 hour period, or if the accountant disagrees with the statements contained in the notice of the OTC derivatives dealer, the accountant shall have a responsibility to inform the Commission and the examining authority responsible for performing reviews of the OTC derivatives dealer pursuant to § 240.15b9–2 by report of material inadequacy within 24 hours thereafter as set forth in § 240.17a–11(g). Such report from the accountant shall, if the OTC derivatives dealer failed to file a notice, describe any material inadequacies found to exist. If the OTC derivatives dealer filed a notice, the accountant shall file a report detailing the aspects, if any, of the OTC derivatives dealer's notice with which the accountant does not agree.

(j) *Accountant's reports, general provisions.*—(1) *Technical requirements.* The accountant's report shall be dated; be signed manually; indicate the city and state where issued; and identify without detailed enumeration the financial statements and schedules covered by the report.

(2) *Representations as to the audit.* The accountant's report shall state whether the audit was made in accordance with generally accepted auditing standards; state whether the accountant reviewed the procedures followed for safeguarding securities; and designate any auditing procedures deemed necessary by the accountant under the circumstances of the particular case which have been omitted, and the reason for their omission. Nothing in this section shall be construed to imply authority for the omission of any procedure which independent accountants would ordinarily employ in the course of an audit made for the purpose of expressing the opinions required under this section.

(3) *Opinion to be expressed.* The accountant's report shall state clearly the opinion of the accountant:

(i) In respect of the financial statements and schedules covered by the report and the accounting principles and practices reflected therein; and

(ii) As to the consistency of the application of the accounting principles, or as to any changes in such principles which have a material effect on the financial statements.

(4) *Exceptions.* Any matters to which the accountant takes exception shall be clearly identified, the exception thereto specifically and clearly stated, and, to the extent practicable, the effect of each such exception on the related financial statements given.

(5) *Definitions.* For the purpose of this section, the terms *audit* (or *examination), accountant's report, and certified* shall have the meanings given in § 210.1–02 of this chapter.

(k) *Accountant's report on material inadequacies.* The OTC derivatives dealer shall file concurrently with the annual audit report a supplemental report by the accountant describing any material inadequacies found to exist or found to have existed since the date of the previous audit. The supplemental report shall indicate any corrective action taken or proposed by the OTC derivatives dealer in regard thereto. If the audit did not disclose any material inadequacies, the supplemental report shall so state.

(l) *Accountant's report on management controls.* The OTC derivatives dealer shall file concurrently with the annual audit report a supplemental report by the accountant indicating the independent public accountant's opinion on the OTC derivatives dealer's compliance with its internal risk management control objectives. The procedures are to be performed and the report is to be prepared in accordance with U.S. Generally Accepted Auditing Standards.

(m) *Accountant's report on inventory pricing and modeling.* (1) The OTC derivatives dealer shall file concurrently with the annual audit report a supplemental report by the accountant indicating the results of the accountant's review of the broker's or dealer's inventory pricing and modelling procedures. This review shall be conducted in accordance with procedures agreed to by the OTC derivatives dealer and by the independent public accountant conducting the review.

(2) The agreed-upon procedures are to be performed and the report is to be prepared in accordance with the U.S. Generally Accepted Auditing Standards.

(3) Every OTC derivatives dealer shall file prior to the commencement of the initial review, the procedures to be performed pursuant to paragraph (m)(1) of this section with the Commission's principal office in Washington, D.C., and the principal office of the examining authority responsible for reviewing the OTC derivatives dealer pursuant to § 240.15b9–2. Prior to the commencement of each subsequent review, every OTC derivatives dealer shall file with the Commission's principal office in Washington, D.C., and with the examining authority responsible for reviewing the OTC derivatives dealer pursuant to § 240.15b9–2 notice of changes in the agreed-upon procedures.

(n) *Extensions and exemptions.* (1) An examining authority responsible for performing reviews of an OTC derivatives dealer pursuant to § 240.15b9–2 may extend the period under paragraph (b) of this section for filing annual audit reports. The examining authority responsible for performing reviews of the OTC derivatives dealer pursuant to § 240.15b9–2 shall maintain, in the manner prescribed in § 240.17a–1, a record of each extension granted.

(2) On written request of the examining authority responsible for performing reviews of the OTC derivatives dealer pursuant to § 240.15b9–2, on written request of the OTC derivatives dealer, or on its own motion, the Commission may grant an extension of time or an exemption from any of the requirements of this section either unconditionally or on specified terms and conditions.

(o) *Notification of change of fiscal year.* (1) In the event any OTC derivatives dealer finds it necessary to change its fiscal year, it must file, with the Commission's principal office in Washington, D.C., and the principal office of the examining authority responsible for performing reviews of the OTC derivatives dealer pursuant to § 240.15b9–2, a notice of such change.

(2) Such notice shall contain a detailed explanation of the reasons for the change. Any change in the filing period for the audit report must be approved by the examining authority responsible for reviewing the OTC derivatives dealer pursuant to § 240.15b9–2.

(p) *Filing requirements.* For purposes of filing requirements as described in § 240.17a–12, such filing shall be deemed to have been accomplished upon receipt at the Commission's principal office in Washington, D.C., with duplicate originals simultaneously filed at the locations prescribed in the particular paragraph of § 240.17a–12 which is applicable.

18. By adding §§ 240.36a1–1 and 240.36a1–2 to read as follows:

§ 240.36a1–1 Exemption from Section 7 for OTC derivative dealers.

(a) Except as provided in paragraph (b) of this section, transactions by an OTC derivatives dealer shall be exempt from the provisions of Section 7 of the Act (15 U.S.C. 78g), provided that the OTC derivatives dealer complies with other federal margin requirements applicable to non-broker-dealer lenders.

(b) The exemption provided under paragraph (a) of this section shall not apply to extensions of credit made directly by a registered broker or dealer

(other than an OTC derivatives dealer) in connection with transactions in eligible OTC derivative instruments for which an OTC derivatives dealer acts as counterparty.

§ 240.36a1–2 Exemption from SIPA for OTC derivatives dealers.

OTC derivatives dealers, as defined in § 240.3b–12, shall be exempted from the provisions of the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa *et seq.*).

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

19. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

20. Section 249.617 is amended by adding the phrase ''§ 240.17a–12,'' after the phrase ''240.17a–5(a), (b), and (d),''.

21. Form X–17A–5 (referenced in § 249.617) is amended by adding section IIB to read as follows:

Note: Form X–17A–5 does not, and the amendments will not, appear in the Code of Federal Regulations. Part IIB of Form X–17A–5 is attached as Appendix A to this document.

Dated: December 17, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Appendix A

[Note: the text of Appendix A does not appear in the Code of Federal Regulations.]

General Instructions

The FOCUS Report (Form X–17A–5IIB) constitutes the basic financial and operational report required of OTC derivatives dealers. Much of the information required by the FOCUS report is the same or similar to the information required to be reported by broker-dealers required to file Form X–17A–5 Part II. Consequently, for those items that appear on both forms, the instructions for X–17A–5 Part II are to be followed when completing form X–17A–5 Part IIB. The following instructions apply to new information requests and to items appearing on both forms that have been altered to better reflect an OTC derivatives dealer's unique business.

Computation of Net Capital and Required Net Capital

(Under 15c3–1 Appendix F)

Tentative Net Capital

For purposes of paragraph (a)(5), the term ''tentative net capital'' means the net capital of an OTC derivatives dealer before the application of either the securities haircuts in paragraph (c)(2)(vi) of Rule 15c3–1 or the charges for market and credit risk as computed pursuant to proposed Appendix F and increased by unsecured receivables (unrealized gains) resulting from eligible OTC derivative instruments.

Market Risk Exposure

The capital requirement for an OTC derivatives dealer electing to apply Appendix F of Rule 240.15c3–1 is computed as follows:

(1) Full Value-at-Risk Method. An OTC derivatives dealer shall deduct from net worth an amount for market risk exposure for eligible OTC derivatives transactions and other positions in its proprietary or other accounts equal to the value at risk (''VAR'') of these positions obtained from its proprietary model, multiplied by the appropriate multiplication factor. See paragraph (d)(1)(v)(C) of Appendix F for more information on the multiplication factor. The proprietary model used to calculate the capital requirement for market risk must be approved by the Commission prior to its use.

(2) Alternative Method for Equities. An OTC derivatives dealer may choose to use the alternative method to calculate market risk for equity instruments, including OTC options, or if the Commission does not approve an OTC derivatives dealer's use of VAR models for equity instruments, the OTC derivatives dealer must use the alternative method. Under the alternative method, the deduction for market risk will be an amount equal to the largest theoretical loss calculated in accordance with the theoretical pricing model set forth in Appendix A of Rule 240.15c3–1. The OTC derivatives dealer may use its own theoretical pricing model as long as it contains the minimum pricing factors set forth in Appendix A.

Credit Risk Exposure

The capital requirement for credit risk arising from an OTC derivatives dealer's eligible OTC derivatives transactions consists of a counterparty charge and a concentration charge. The counterparty charge is computed as follows:

(1) the net replacement value for each counterparty (less the value of any liquid collateral) multiplied by 8% multiplied by the counterparty factor. The counterparty factors are 20% for entities with ratings for senior unsecured long term debt or commercial paper in the two highest rating categories by at least two nationally recognized statistical rating organization (''NRSROs''); 50% for entities with ratings for senior unsecured long term debt in the third and fourth highest ratings categories by at least two NRSROs; and 100% for entities with ratings for senior unsecured long term debt below the four highest rating categories.

(2) The net replacement value for each counterparty with senior unsecured long term debt in default (less any liquid collateral).

The concentration charge is computed as follows: where the net replacement value in the account of any one counterparty exceeds 25% of the OTC derivatives dealer's tentative net capital, deduct the following amounts. For counterparties with ratings for senior unsecured long term debt or commercial paper in the two highest rating categories by at least two NRSROs, 5% of the amount of the net replacement value in excess of 25% of the OTC derivatives dealer's tentative net capital. For counterparties with ratings for senior unsecured long term debt in the third and fourth highest rating categories by at least two NRSROs, 20% of the amount of the net replacement value in excess of 25% of the OTC derivatives dealer's tentative net capital. For counterparties with ratings for senior unsecured long term debt below the four highest rating categories, 50% of the amount of the net replacement value in excess of 25% of the OTC derivatives dealer's tentative net capital. Finally, where the aggregate of the net replacement value of all counterparties exceeds 300% of an OTC derivative dealer's tentative net capital, it would deduct from net worth 100% of the amount of such excess.

Computation of Net Capital and Required Net Capital (alternative)

Tentative Net Capital

For purposes of paragraph (a)(5), the term ''tentative net capital'' means the net capital of an OTC derivatives dealer before the application of either the securities haircuts in paragraph (c)(2)(vi) of Rule 15c3–1 or the charges for market and credit risk as computed pursuant to proposed Appendix F and increased by unsecured receivables (unrealized gains) resulting from eligible OTC derivative instruments.

Credit Risk Exposure

The capital requirement for credit risk arising from an OTC derivatives dealer's eligible OTC derivatives transactions consists of a counterparty charge and a concentration charge. The counterparty charge is computed as follows:

(1) the net replacement value for each counterparty (less the value of any liquid collateral) multiplied by 8% multiplied by the counterparty factor. The counterparty factors are 20% for entities with ratings for senior unsecured long term debt or commercial paper in the two highest rating categories by at least two nationally recognized statistical rating organization (''NRSROs''); 50% for entities with ratings for senior unsecured long term debt in the third and fourth highest ratings categories by at least two NRSROs; and 100% for entities with ratings for senior unsecured long term debt below the four highest rating categories.

(2) The net replacement value for each counterparty with senior unsecured long term debt in default (less any liquid collateral).

The concentration charge is computed as follows: where the net deficit in the account of any one counterparty exceeds 50% of the OTC derivatives dealer's tentative net capital, deduct it from net worth. For counterparties with ratings for senior unsecured long term debt or commercial paper in the two highest rating categories by at least two NRSROs, 5% of the amount of the net deficit in excess of 25% of the OTC derivatives dealer's tentative net capital. For counterparties with ratings for senior unsecured long term debt in the third and fourth highest rating categories by at least two NRSROs, 20% of the amount of the net deficit in excess of 25% of the OTC derivatives dealer's tentative net capital. For counterparties with ratings for senior

unsecured long term debt below the four highest rating categories, 50% of the amount of the net deficit in excess of 25% of the OTC derivatives dealer's tentative net capital.

Finally, where the aggregate of the net deficits of all counterparties exceeds 300% of an OTC derivative dealer's tentative net capital, it would deduct from net worth 100% of the amount of such excess.

Aggregate Securities and OTC Derivatives Positions

Provide the following information for each affiliated broker-dealer as of the end of each quarter. Indicate the name of each affiliated broker-dealer in a separate column or complete a separate schedule for each affiliated broker-dealer. In the event a separate listing of a position, financial instrument or otherwise is required pursuant to any of the provisions of Section 240.17h-1T, the dealer should indicate as such in the appropriate section of this schedule. Where appropriate, indicate long and short positions separately.

BILLING CODE 8010–01–P

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM X-17A-5

FOCUS REPORT

(Financial and Operational Combined Uniform Single Report)

PART IIB [11]

(PLEASE READ INSTRUCTIONS BEFORE PREPARING FORM.)

THIS REPORT IS BEING FILED PURSUANT TO (Check Applicable Block(s)):

1) Rule 17a-12 [16] 2) Rule 17a-11 [18] 3) Special request by designated examining authority [19] 4) Other [26]

[13] (Name of Dealer)

[14] (SEC File No.)

[20] (Address of Principal Place of Business (DO NOT USE P. O. Box No.))

[15] (Firm I.D. No.)

[21] (City) [22] (State) [23] (Zip Code)

[24] (For Period Beginning (MM/DD/YY))

[25] (For Period Ending (MM/DD/YY))

NAME AND TELEPHONE NO. OF PERSON TO CONTACT IN REGARD TO THIS REPORT:

[30] (Name)

[31] ((Area Code) - Telephone No.)

NAME(s) OF SUBSIDIARIES OR AFFILIATES CONSOLIDATED IN THIS REPORT:

OFFICIAL USE

[32] [33]

[34] [35]

[36] [37]

[38] [39]

[Does respondent carry its own customer accounts?] Yes [40] No [41]

Check here if respondent is filing an audited report: [42]

EXECUTION:
The registrant/dealer submitting this Form and its attachments and the person(s) by whom it is executed represent hereby that all information contained therein is true, correct and complete. It is understood that all required items, statements, and schedules are considered integral parts of this Form and that the submission of any amendment represents that all unamended items, statements and schedules remain true, correct and complete as previously submitted.

Dated the _____ **day of** _____ **19** _____

MANUAL SIGNATURES OF:

1) _____
(Principal Executive Officer or Managing Partner)

2) _____
(Principal Financial Officer or Partner)

3) _____
(Principal Operations Officer or Partner)

ATTENTION -- Intentional misstatements or omissions of facts constitute Federal Criminal Violations. (See 18 U.S.C. 1001 and 15 U.S.C. 78:f(a))

FOR SEC USE ONLY

TO BE COMPLETED WITH THE ANNUAL AUDIT REPORT ONLY:

INDEPENDENT PUBLIC ACCOUNTANT whose opinion is contained in this report:

70
((Name) IF INDIVIDUAL, give last, first, middle name)

71
((Address) DO NOT USE P. O. Box No.)

72 (City) 73 (State) 74 (Zip Code)

Check One:

Certified Public Accountant 75

Public Accountant 76

Accountant not resident in United States or any of its possessions 77

DO NOT WRITE UNDER THIS LINE

FOR SEC USE ONLY

WORK LOCATION 50	REPORT DATE (MM/DD/YY) 51	DOC. SEQ. NO. 52	CARD 53

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

N 2 [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] 100

(Name of Dealer)

STATEMENT OF FINANCIAL CONDITION FOR OTC DERIVATIVES DEALERS

Consolidated [ ] 198

Unconsolidated [ ] 199

As of (MM/DD/YY) 99

(SEC File No.) 98

ASSETS

Assets	Allowable	Non - Allowable	Total
1. Cash	$ 200		$ 750
2. Cash segregated in compliance with federal and other regulations	210		760
3. Receivable from brokers/dealers and clearing organizations:			
A. Failed to deliver	220		770
B. Securities borrowed	240		780
C. Omnibus accounts	260		790
D. Clearing organization	280		800
E. Contracts:			
1. Interest Rate	300		810
2. Currency & Foreign Exchange	310		820
3. Equity	320		830
4. Commodity	330		840
5. Other	340		850
F. Other	350	$ 550	860
4. Receivable from customers:			
A. Securities accounts:			
1. Cash and fully secured accounts	360		
2. Partly secured accounts	370	560	
3. Unsecured accounts		570	
B. Commodity accounts	380	580	
C. Allowance for doubtful accounts	( ) 385	( ) 590	870

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) As of (MM/DD/YY)

STATEMENT OF FINANCIAL CONDITION FOR OTC DERIVATIVES DEALERS

ASSETS (continued)

Assets		Allowable	Non - Allowable	Total
5. Receivables from non-customers:				
A. Cash and fully secured accounts		$ 390		
B. Partly secured and unsecured accounts		400	$ 600	$ 880
6. Securities purchased under agreements to resale		410	605	890
7. Securities and spot commodities owned at market value:				
A. Bankers acceptances, certificates of deposit and commercial paper		420		
B. U.S. and Canadian government obligations		430		
C. State and municipal government obligations		440		
D. Corporate obligations		450		
E. Stocks and warrants		460		
F. Options		470		
G. Arbitrage		472		
H. Other securities		474		
I. Spot commodities		480		900
8. Securities owned not readily marketable:				
A. At cost	$ 130	490	610	910
9. Other Investments not readily marketable:				
A. At cost	$ 140			
B. At estimated fair value		500	620	920
10. Securities borrowed under subordination agreements and partners' individual and capital securities accounts at market value:				
A. Exempted securities	$ 150			
B. Other	$ 160	510	630	930

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) | As of (MM/DD/YY)

STATEMENT OF FINANCIAL CONDITION FOR OTC DERIVATIVES DEALERS

ASSETS (continued)

Assets		Allowable	Non - Allowable	Total
11. Secured demand notes - market value of collateral:				
A. Exempted securities	$ 170			
B. Other	$ 180	520	640	940
12. Investment in and receivables from affiliates, subsidiaries and associated partnerships		530	670	950
13. Property, furniture, equipment, leasehold improvements and rights under lease agreements:				
At cost (net of accumulated depreciation and amortization)		$ 540	$ 680	$ 960
14. Other Assets:				
A. Dividends and interest receivable		550	690	
B. Free shipments		560	700	
C. Loans and advances		570	710	
D. Miscellaneous		580	720	970
15. TOTAL ASSETS		$ 590	$ 740	$ 980

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) As of (MM/DD/YY)

STATEMENT OF FINANCIAL CONDITION FOR OTC DERIVATIVES DEALERS

LIABILITIES AND OWNERSHIP EQUITY

Liabilities		Total
16. Bank loans payable:		
A. Includable in "Formula for Reserve Requirements"	$	1460
B. Other		1470
17. Securities sold under repurchase agreement		1480
18. Payable to brokers/dealers and clearing organizations:		
A. Failed to receive:		1490
B. Securities loaned:		1500
C. Omnibus accounts:		1510
D. Clearing organization:		1520
E. Other		1570
19. Payable to customers:		
A. Securities accounts-including free credit of $ 950		1580
B. Commodities accounts		1590
20. Payable to non - customers:		
A. Securities accounts		1600
B. Commodities accounts		1610
21. Securities sold not yet purchased at market value- including arbitrage of $ 960	$	1620
22. Accounts payable and accured liabilities and expenses:		
A. Drafts payable		1630
B. Accounts payable		1640
C. Income taxes payable		1650
D. Deferred income taxes		1660
E. Accured expenses and other liabilities		1670
F. Other		1680

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) As of (MM/DD/YY)

STATEMENT OF FINANCIAL CONDITION FOR OTC DERIVATIVES DEALERS

LIABILITIES AND OWNERSHIP EQUITY (continued)

Liabilities		Total
23. Notes and mortgages payable:		
A. Unsecured		1690
B. Secured		1700
24. Liabilities subordinated to claims of general creditors:		
A. Cash borrowings:		1710
1. from outsiders	$ 970	
2. Includes equity subordination (15c3-1d) of	$ 980	
B. Securities borrowings, at market value		1720
1. from outsiders	$ 990	
C. Pursuant to secured demand note collateral agreements:		1730
1. from outsiders	$ 1000	
2. Includes equity subordination (15c3-1d) of	$ 1010	
D. Exchange memberships contributed for use of company, at market value		1740
E. Accounts and other borrowings not qualified for net capital purposes		1750
25. TOTAL LIABILITIES		$ 1760

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer)	As of (MM/DD/YY)

STATEMENT OF FINANCIAL CONDITION FOR OTC DERIVATIVES DEALERS

LIABILITIES AND OWNERSHIP EQUITY (continued)

Ownership Equity	Total	
26. Sole proprietorship	$	1770
27. Partnership-limited partners		1780
28. Corporation:		
A. Preferred stock		1791
B. Common Stock		1792
C. Additional paid-in capital		1793
D. Retained earnings		1794
E. Total		1795
F. Less capital stock in treasury	( )	1796
29. TOTAL OWNERSHIP EQUITY	$	1800
30. TOTAL LIABILITIES AND OWNERSHIP EQUITY	$	1810

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer)	As of (MM/DD/YY)

COMPUTATION OF NET CAPITAL AND NET CAPITAL REQUIRED
(Electing 15c3-1 Appendix E)

CAPITAL

Capital

1. Total Ownership Equity		$	750
2. Deduct: Ownership Equity not Allowable for Net Capital		( )	335
3. Total Ownership Equity Qualified for Net Capital			840
4. Add: Subordinated Liabilities Approved for Net Capital			840
5. Other Allowable Credits or Deductions			840
6. Total Capital and Approved Subordinations			840
7. Non-Allowable Assets	$ 550		
8. Secured demand note deficiency	550		
9. Other Deductions and Charges	300		
10. Total Non-Allowable Assets, Other Deductions, and Charges (add lines 7 - 9)		( )	335
11. Tentative Net Capital (Must equal or exceed $100,000,000)		$	580

Computation of Net Capital Requirements and Excess Net Capital

12. Market Risk Exposure:			
A. Total Value At Risk		$	340
Value At Risk Components:			
1. Fixed Income (VaR)	$ 310		
2. Currency (VaR)	320		
3. Commodities (VaR)	570		
4. Equities (VaR)	350		
NOTE: The sum of the value at risk components may not equal total value at risk.			
B. Multiplication Factor		X $	820
C. Subtotal (If Line 12A is positive, multiply Line 12A by 12B)			820
D. Alternative Method for Equities under Appendix A of Rule 15c3-1 (if applicable)			840
13. Subtotal Market Risk Exposure (add Lines 12C and 12D)		$	840
14. Credit Risk Exposure:			
A. Credit Risk Charge (Counterparty)			840
B. Concentration Charge			550

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer)	As of (MM/DD/YY)

COMPUTATION OF NET CAPITAL AND NET CAPITAL REQUIRED
(Electing 15c3-1 Appendix E)

CAPITAL (continued)

Capital

15. Subtotal Credit Risk Exposure (add Lines 14A and 14B)	$		840
16. Net Capital (Line 11 less Lines 13 and 15)			840
17. Minimum Capital Requirement		20,000,000	580
18. Excess Net Capital (Line 16 less Line 17)	$		840

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer)	As of (MM/DD/YY)

COMPUTATION OF NET CAPITAL AND NET CAPITAL REQUIRED
(Under (c)(3)(vi) of Rule 15c3-1)

Capital

1. Total Ownership Equity (from Statement of Financial Condition - Item 1800)	$	750
2. Deduct: Ownership Equity not allowable for Net Capital	( )	760
3. Total Ownership Equity Qualified for Net Capital		840
4. Add: Subordinated Liabilities Approved for Net Capital		840
5. Other Allowable Credits or Deductions		840
6. Total Capital and Approved Subordinations	$	840
7. Non-Allowable Assets	( )	335
8. Other Deductions and/or Charges:	( )	335
9. Secured demand note deficiency	( )	335
10. Commodity futures contracts and spot commodities proprietrary capital charges	( )	335
11. Other additions and/or allowable credits		840
12. Tentative Net Capital (must equal or exceed $100,000,000)	$	840

13. Haircuts On Securities (computed pursuant to 15c3-1(c)(2)(vi)):

A. Fixed Income	$	310
B. Currency		320
C. Commodities		570
D. Equities		350

14. Total deductions and/or charges	( )	335
15. Undue Concentration	( )	335
16. Other (List)	( )	335
17. Credit Risk	( )	335
18. Net Capital	$	840
19. Minimum Net Capital	$ 20,000,000	580
20. Excess Net Capital	$	840

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

For the Period (MM/DD/YY) from _____ 3932 to _____ 3933

_____ (Name of Dealer)

Number of months included in this statement [ ] 3931

STATEMENT OF INCOME (LOSS)

REVENUE

1. Contracts:			
A. Interest Rate/Fixed Income Products		$	3935
B. Over-the-counter currency and foreign exchange products for Net Capital			3937
C. Equity products			3938
D. Commodity Products			0
E. All other securities commissions			3939
F. Total securities commissions		$	3940
2. Gains or Losses on Firm Securities Trading Accounts:			
A. From market making in over-the-counter equity securities		$	3941
1. Includes gains or (losses) OTC market making in exchange listed equity securties	$ 3943		
B. From trading in debt securities			3944
C. From market making in options on a national securities exchange			3945
D. From all other trading			3949
E. Total gains or (losses)		$	3950
3. Gains or Losses on Firm Securities Investment Accounts:			
A. Includes realized gains (losses)	$ 4235		
B. Includes unrealized gains (losses)	4236		
C. Total realized and unrealised gains (losses)		$	3952
4. Interest			3960
5. Fees for account supervision, Investment advisory and administrative services			3975
6. Revenue from research services			3980
7. Commodities revenue			3990
8. Other revenue related to securities business			3985
9. Other revenue			3995
10. Total Revenue		$	4030

EXPENSES

11. Compensation	$	4110
12. Clerical and administrative employees' expenses		4040

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

For the Period (MM/DD/YY) from _____ 3932 to _____ 3933

_____ (Name of Dealer)

Number of months included in this statement _____ 3931

STATEMENT OF INCOME (LOSS)

EXPENSES (continued)

13. Salaries and other employment costs for general partners, and voting stockholder officers		$	4120
A. Includes interest credited to General and Limited Partners capital accounts	$ 4130		
14. Floor brokerage paid to certain brokers (see definition)			4055
15. Commissions and clearance paid to all other brokers (see definition)			4145
16. Clearance paid to non-brokers (see definition)			4135
17. Communications			4060
18. Occupancy and equipment costs			4080
19. Promotional costs			4150
20. Interest expense			4075
A. Includes interest on accounts subject to subordination agreements	4070		
21. Losses in error account and bad debts			4170
22. Data processing costs (including service bureau service charges)			4186
23. Non-recurring charges			4190
24. Regulatory fees and expenses			4195
25. Other expenses			4100
26. Total expenses		$	4200

NET INCOME

27. Income (loss) before Federal income taxes and items below (Item 10 less Item 26)		$	4210
28. Provision for Federal income taxes (for parent only)			4220
29. Equity in earnings (losses) of unconsolidated subsidiaries not included above			4222
A. After Federal income taxes of	4238		
30. Extraordinary gains (losses)			4224
A. After Federal income taxes of	4239		
31. Cumulative effect of changes in accounting principles			4225
32. Net income (loss) after Federal income taxes and extraordinary items			4230

MONTHLY INCOME

33. Income (current month only) before provision for Federal income taxes and extraordinary items		$	4211

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) As of (MM/DD/YY)

Ownership Equity and Subordinated Liabilitites maturing or proposed to be withdrawn within the next six months and accruals, (as defined below), which have not been deducted in the computation of Net Capital.

Type of Proposed Withdrawal or Accrual (see below for code to enter)	Name of Lender or Contributor	Insider or Outsider? (In or Out)	Amount to be Withdrawn (cash amount and/or Net Capital Value of Securities)	Withdrawal or Maturity Date (MM/DD/YY)	Expect to Renew (Yes or No)
4600	4601	4602	$ 4603	4604	4605
4610	4611	4612	4613	4614	4615
4620	4620	4620	4620	4620	4620
4630	4630	4630	4630	4630	4630
4640	4640	4640	4640	4640	4640
4650	4650	4650	4650	4650	4650
4660	4660	4660	4660	4660	4660
4670	4670	4670	4670	4670	4670
4680	4680	4680	4680	4680	4680
4690	4690	4690	4690	4690	4690

Total $ 4699*

*** To agree with the total on Recap (Item No. 4880)**

OMIT PENNIES

WITHDRAWAL CODE:	DESCRIPTIONS
1	Equity Capital
2	Subordinated Liabilities
3	Accruals
4	15c3-1(c)(2)(iv) Liabilities

INSTRUCTIONS: Detail Listing must include the total of items maturing during the six month period following the report date, regardless of whether or not the capital contribution is expected to be renewed. The schedule must also include proposed capital withdrawals scheduled within the six month period following the report date including the proposed redemption of stock and payments of liabilities secured by fixed assets (which are considered allowable assets in the capital computation pursuant to Rule 15c-3-1(c)(2)(iv)), which could be required by the lender on demand or in less than six months.

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

CAPITAL WITHDRAWALS

PART IIB

(Name of Dealer)	As of (MM/DD/YY)

Ownership Equity and Subordinated Liabilities maturing or proposed to be withdrawn within the next six months and accruals, which have not been deducted in the computation of net capital.

RECAP

1. Equity Capital
   - A. Partnership Capital:
     - 1. General Partners ..... $ _____ 4700
     - 2. Limited ..... _____ 4710
     - 3. Undistributed Profits ..... _____ 4720
     - 4. Other (describe below) ..... _____ 4730
     - 5. Sole Proprietorship ..... _____ 4735
   - B. Corporation Capital:
     - 1. Common Stock ..... $ _____ 4740
     - 2. Preferred Stock ..... _____ 4750
     - 3. Retained Earings (Dividends and Other) ..... _____ 4760
     - 4. Other (describe below) ..... _____ 4770
2. Subordinated Liabilities
   - A. Secured Demand Notes ..... $ _____ 4780
   - B. Cash Subordinates ..... _____ 4790
   - C. Debentures ..... _____ 4800
   - D. Other (describe below) ..... _____ 4810
3. Other Anticipated Withdrawals
   - A. Bonuses ..... $ _____ 4820
   - B. Voluntary Contributions to Pension or Profit Sharing Plans ..... _____ 4860
   - D. Other (describe below) ..... _____ 4870
4. Description of Other

_____

_____

_____

_____

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

CAPITAL WITHDRAWALS

PART IIB

(Name of Dealer)	As of (MM/DD/YY)

STATEMENT OF CHANGES IN OWNERSHIP EQUITY (SOLE PROPRIETORSHIP, PARTNERSHIP OR CORPORATION)

1. Balance, beginning of period		$	4240
A. Net Income (loss)			4250
B. Additions (includes non-conforming capital of	$ 4262		4260
C. Deductions	4272		4270
2. Balance, end of period (From item 1800)		$	4290

STATEMENT OF CHANGES IN LIABILITIES SUBORDINATED TO CLAIMS OF GENERAL CREDITORS

3. Balance, beginning of period	$	4300
A. Increases		4310
B. Decreases	( )	4320
4. Balance, end of period (From item 3520)	$	4330

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) _____ As of (MM/DD/YY) _____

FINANCIAL AND OPERATIONAL DATA

	VALUATION	NUMBER
1. Month end total number of stock record breaks unresolved over three business days		
A. Breaks long	$ 4890	4900
B. Breaks short	$ 4890	4900

2. Is the firm in compliance with Rule 17a-13 regarding periodic count and verification of securities positions and locations at least once in each calendar quarter? (Check one) Yes 4930 No 4940

3. Personnel employed at end of reporting period:	
A. Income producing personnel	2045
B. Non-Income producing personnel (all other)	2055
C. Total	2055
4. Actual number of tickets executed during current month of reporting period	2055
5. Number of corrected customer confirmations mailed after settlement date	2055

	NO. OF ITEMS	DEBIT (Short Value)	NO. OF ITEMS	Credit (Long Value)
6. Money differences	2085	$ 2090	2080	$ 2055
7. Security suspense accounts	2085	$ 2090	2080	$ 2055
8. Security difference accounts	2085	$ 2090	2080	$ 2055
9. Commodity suspense accounts	2085	$ 2090	2080	$ 2055
10. Open transactions with correspondents, other brokers, clearing organizations, depositories and interoffice and inter-company accounts which could result in a charge -- unresolved amounts over 30 calendar days	2085	$ 2090	2080	$ 2055
11. Bank account reconciliations -- unresolved amounts over 30 calendar days	2085	$ 2090	2080	$ 2055
12. Open transfers over 40 calendar days, not confirmed	2085	$ 2090	2080	$ 2055
13. Transactions in reorganization accounts -- over 60 calendar days	2085	$ 2090	2080	$ 2055
14. Total	2085	$ 2090	2080	$ 2055

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) As of (MM/DD/YY)

FINANCIAL AND OPERATIONAL DATA (continued)

	NO. OF ITEMS	Leger Amount	Market Value
15. Failed to deliver 11 business days or longer (21 business days or longer in the case of Municipal Securities)	2085	$ 2090	$ 2055
16. Failed to receive 11 business days or longer (21 business days or longer in the case of Municipal Securities)	2085	$ 2090	$ 2055
17. Security concentrations (See instructions in Part I):			
A. Proprietary positions			$ 2055
18. Total of personal capital borrowings due within six months			$ 2055
19. Maximum haircuts on underwriting commitments during the period			$ 2055
20. Planned capital expenditures for business expansion during next six months			$ 2055
21. Liabilities of other individuals or organizations guaranteed by respondent			$ 2055
22. Lease and rentals payable within one year			$ 2055
23. Aggregated lease and rental commitments payable for entire term of the lease			
A. Gross			$ 2055
B. Net			$ 2055

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT
PART IIB

BROKER OR DEALER: as of _____

SCHEDULE I
CREDIT-CONCENTRATION REPORT ON OTC DERIVATIVES EXPOSURES (1)

Counterparty Identifier (2)	Country (3)	Industry Segment (4)	Rating (5)	Gross Replacement Value (6) Receivable (Gross Gain)	Gross Replacement Value (6) Payable (Gross Loss)	Net Replacement Value (7)	Current Net Exposure (8)	Total Credit Exposure (9)	Comments (10)
Totals									

(1) For purposes of this report, "OTC derivatives" means an eligible OTC derivatives instrument pursuant to section 240.3b-13.

(2) Identify counterparty by counterparty's corporate name.

(3) Identify country exposures by residence of main operating company.

(4) Report on a counterparty-by-counterparty basis by type of entity in accordance with ISDA guidelines (i.e., Primary ISDA Members, Non-Primary ISDA Members: Corporates, Financial Institutions, Government/Supranationals, or Other.

(5) Ratings are internal credit ratings as assigned by the firm. See Schedule IV for conversion of these ratings into a least two Nationally Recognized Statistical Rating (NRSRO) agency equivalent.

(6) Report gross replacement value (receivable and payable) (for each of the top 20 current net exposures), excluding the effect of legally enforceable netting agreements and excluding the application of collateral.

(7) Report net replacement value (for each of the top 20 current net exposures), including the effect of legally enforceable netting agreements but excluding the application of collateral.

(8) Report current net exposure (for each of the top 20 current net exposures), including the effect of legally enforceable netting agreements and the application of collateral.

(9) Report the sum of the current net exposure and the potential additional credit exposure.

(10) Provide additional relevant information (e.g., details on credit enhancements, type of contract, maturity, offsetting, significant additional exposures in affiliated entities, etc.).

BROKER OR DEALER: as of _____

SCHEDULE II
PORTFOLIO SUMMARY OF OTC DERIVATIVES EXPOSURES (1)

Credit Rating Category (2)	Industry Segment (3)	Current Net Exposure (4)	Net Replacement Value (5)	Gross Replacement Value (6) Receivable	Payable
XXX	Primary ISDA Member				
	Corporate				
	Financial Institutions				
	Government				
	Other				
	TOTAL				
XX	Primary ISDA Member				
	Corporate				
	Financial Institutions				
	Government				
	Other				
	TOTAL				
X	Primary ISDA Member				
	Corporate				
	Financial Institutions				
	Government				
	Other				
	TOTAL				
	GRAND TOTAL				

(1) See Note (1) on Schedule I.

(2) See Note (5) on Schedule I.

(3) See Note (4) on Schedule I.

(4) Net replacement value, after application of collateral.

(5) Include effect of legally enforceable netting agreements, before application of collateral.

(6) Exclude effect of netting agreements and exclude application of collateral.

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT
PART IIB

BROKER OR DEALER: as of _____

SCHEDULE III
GEOGRAPHIC DISTRIBUTION (1) OF OTC DERIVATIVES EXPOSURES (2)

Country	Credit Rating Category (3)	Current Net Exposure (4)	Net Replacement Value (5)	Gross Replacement Value (6) Receivable	Gross Replacement Value (6) Payable
A	XXX				
	XX				
	X				
	YYY				
	YY				
	Y				
	Country A TOTAL				
B	XXX				
	XX				
	X				
	YYY				
	YY				
	Y				
	Country B TOTAL				
	GRAND TOTAL				

(1) Top 10 country exposures (by residence of main operating company).

(2) See Note (1) on Schedule I.

(3) See Note (5) on Schedule I.

(4) See Note (4) on Schedule II.

(5) See Note (5) on Schedule II.

(6) See Note (6) on Schedule II.

BROKER OR DEALER: as of _____

SCHEDULE IV
INTERNAL CREDIT RATING CONVERSION

Internal Credit Rating	Equivalent Ratings NRSRO 1	NRSRO 2
	Aaa	AAA
	Aa1	AA+
	Aa2	AA
	Aa3	AA-
	A1	A+
	A2	A
	A3	A-
	Baa1	BBB+
	Baa2	BBB
	Baa3	BBB-
	Ba1	BB+
	Ba2	BB
	Ba3	BB-
	B3	B+
	B2	B
	B1	B-
	CCC	CCC

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT
PART IIB

BROKER OR DEALER:

as of _____

SCHEDULE V
NET REVENUES (1) FROM OTC DERIVATIVES (2) AND RELATED ACTIVITIES

Product Category (3)	Quarter Ended [DATE]	Month Ended [MONTH 3]	Month Ended [MONTH 2]	Month Ended [MONTH 1]
Fixed Income Products				
OTC Options				
Swaps				
Dollar				
Non-Dollar				
Currency & Foreign Exchange Products				
Equity Products				
Commodity Products				
Other Products (specify)				
Total All Products				

(1) Report net revenues from OTC derivatives activities in the specified product category after taking inro account related positions (including those that are not OTC derivatives), with net revenues defined as trading gains/losses plus interest and dividend income less dividend and interest expense (excluding all other expenses and allocable overhead).

(2) See Note (1) on Schedule I.

(3) Product types should be organized by one or more principle market categories.

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer)	As of (MM/DD/YY)

SCHEDULE VI
AGGREGATE SECURITIES AND OTC DERIVATIVE POSITIONS

I. AGGREGATE SECURITIES AND COMMODITIES POSITIONS

Aggregate Securities and Commodities Positions	LONG		SHORT	
1. U.S. Treasury securities	$	1000	$	1005
2. U.S. Government agency	$	1010	$	1015
3. Securities issued by states and political subdivisions in the U.S.	$	1020	$	1025
4. Foreign securities:				
A. Debt securities	$	1030	$	1035
B. Equity securities	$	1040	$	1045
5. Banker's acceptances	$	1050	$	1055
6. Certificates of deposit	$	1060	$	1065
7. Commercial paper	$	1070	$	1075
8. Corporate obligations	$	1080	$	1085
9. Stocks and warrants (other than arbitrage positions)	$	1090	$	1095
10. Arbitrage:				
A. Index arbitrage and program trading	$	1100	$	1105
B. Risk arbitrage	$	1110	$	1115
C. Other arbitrage	$	1120	$	1125
11. Options:				
A. Market value of put options:				
1. Listed	$	1130	$	1135
2. Unlisted	$	1140	$	1145
B. Market value of call options:				
1. Listed	$	1150	$	1155
2. Unlisted	$	1160	$	1165
12. Spot commodities	$	1170	$	1175
13. Investments with no ready market:				
A. Equity	$	1180	$	1185
B. Debt	$	1190	$	1195
C. Other (include limited partnership interests)	$	1200	$	1205
14. Other securites or commodities	$	1210	$	1215

15. Summary of delta or similar analysis (if available) (attach analysis)

000's OMITTED

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) _____ As of (MM/DD/YY) _____

II. FINANCIAL INSTRUMENTS WITH OFF-BALANCE SHEET RISK AND WITH CONCENTRATION OF CREDIT RISK

(Provide notional or contractual amounts where appropriate, or in the case of options, the values of the underlying instrument.)

A. Securities	LONG		SHORT	
1. When-issued securities:				
A. Gross commitments to purchase	$	2000	$	2005
B. Gross commitments to sell	$	2010	$	2015
2. Written stock option contracts:				
A. Market value, and the value of the underlying securities, of call contracts:				
1. Listed				
a. Market value	$	2020	$	2025
b. Value of underlying securities	$	2030	$	2035
2. Unlisted				
a. Market value	$	2040	$	2045
b. Value of underlying securities	$	2050	$	2055
B. Market value, and the value of the underlying securities, of put contracts:				
1. Listed				
a. Market value	$	2060	$	2065
b. Value of underlying securities	$	2070	$	2075
2. Unlisted				
a. Market value	$	2080	$	2085
b. Value of underlying securities	$	2090	$	2095
C. Market value, and the value of the underlying securities, of naked call contracts:				
1. Listed				
a. Market value	$	2100	$	2105
b. Value of underlying securities	$	2110	$	2115
2. Unlisted				
a. Market value	$	2120	$	2125
b. Value of underlying securities	$	2130	$	2035
D. Market value, and the value of the underlying securities, of naked put contracts:				
1. Listed				
a. Market value	$	2140	$	2145
b. Value of underlying securities	$	2150	$	2155
2. Unlisted				
a. Market value	$	2160	$	2165
b. Value of underlying securities	$	2170	$	2175

000's OMITTED

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) _____ As of (MM/DD/YY) _____

II. FINANCIAL INSTRUMENTS WITH OFF-BALANCE SHEET RISK AND WITH CONCENTRATION OF CREDIT RISK

(Provide notional or contractual amounts where appropriate, or in the case of options, the values of the underlying instrument.)

	LONG	SHORT
3. Futures:		
A. U.S. Treasury and mortgage-backed securities futures	$ 2020	$ 2025
B. Other futures (specify)	$ 2030	$ 2035
4. Forwards:		
A. U.S. Treasury and mortgage-backed securities	$ 2020	$ 2025
1. Aggregate current cost of replacing contracts by counter-party.	$ 2010	$ 2015
2. Per counterparty breakdown where credit risk exceeds the (attach schedule)		
B. Other forwards (specify)	$ 2020	$ 2025
1. Aggregate current cost of replacing contracts by counter-party.	$ 2010	$ 2015
2. Per counterparty breakdown where credit risk exceeds the (attach schedule)		
B. Interest Rate Swaps		
1. U.S. dollar denominated swaps:		
A. Total notional or contractual amount	$ 2000	$ 2005
B. Aggregate current cost of replacing contracts by counter-party.	$ 2010	$ 2015
C. Per counterparty breakdown. (attach schedule)		
2. Cross currency swaps:		
A. Total notional or contractual amount	$ 2000	$ 2005
B. Aggregate current cost of replacing contracts.	$ 2010	$ 2015
C. Per counterparty breakdown. (attach schedule)		
C. Foreign exchange		
1. Swaps:		
A. Total notional or contractual amount	$ 2000	$ 2005
B. Aggregate cost of replacing contracts by counterparty.	$ 2010	$ 2015
C. Per counterparty breakdown. (attach schedule)		
2. Notional or contractual amounts of commitments to purchase foreign currencies and U.S. dollar exchange:		
A. Futures	$ 2020	$ 2025

000's OMITTED

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer)	As of (MM/DD/YY)

II. FINANCIAL INSTRUMENTS WITH OFF-BALANCE SHEET RISK AND WITH CONCENTRATION OF CREDIT RISK

(Provide notional or contractual amounts where appropriate, or in the case of options, the values of the underlying instrument.)

	LONG	SHORT
B. Forwards	$ 2020	$ 2025
1. Aggregate current cost of replacing contracts by counter-party.	$ 2010	$ 2015
2. Per counterparty breakdown. (attach schedule).		
3. Naked written option contracts:		
A. Contractual value	$ 2000	$ 2005
B. Value of the underlying instruments	$ 2000	$ 2005
D. All other swap agreements (specify type) (attach schedule if necessary)		
1. Total notional or contractual amount	$ 2000	$ 2005
2. Aggregate current cost of replacing contracts by counterparty.	$ 2010	$ 2015
3. Per counterparty breakdown. (attach schedule)		
E. Commodities		
1. Futures	$ 2020	$ 2025
2. Forwards	$ 2020	$ 2025
1. Aggregate current cost of replacing contracts by counter-party.	$ 2010	$ 2015
2. Per counterparty breakdown. (attach schedule).		
3. Sold option contracts (e.g., options on individual commodities and commodities indexes)		
A. Market value, and the value of the underlying instruments, of call contracts:		
1. Listed		
a. Market value	$ 2140	$ 2145
b. Value of underlying instruments	$ 2150	$ 2155
2. Unlisted		
a. Market value	$ 2160	$ 2165
b. Value of underlying instruments	$ 2170	$ 2175
B. Market value, and the value of the underlying instruments, of put contracts:		
1. Listed		
a. Market value	$ 2140	$ 2145
b. Value of underlying instruments	$ 2150	$ 2155

000's OMITTED

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer)	As of (MM/DD/YY)

II. FINANCIAL INSTRUMENTS WITH OFF-BALANCE SHEET RISK AND WITH CONCENTRATION OF CREDIT RISK

(Provide notional or contractual amounts where appropriate, or in the case of options, the values of the underlying instrument.)

	LONG	SHORT
2. Unlisted		
a. Market value	$ 2160	$ 2165
b. Value of underlying instruments	$ 2170	$ 2175
C. Market value, and the value of the underlying instruments, of naked call contracts:		
1. Listed		
a. Market value	$ 2140	$ 2145
b. Value of underlying instruments	$ 2150	$ 2155
2. Unlisted		
a. Market value	$ 2160	$ 2165
b. Value of underlying instruments	$ 2170	$ 2175
D. Market value, and the value of the underlying instruments, of naked put contracts:		
1. Listed		
a. Market value	$ 2140	$ 2145
b. Value of underlying instruments	$ 2150	$ 2155
2. Unlisted		
a. Market value	$ 2160	$ 2165
b. Value of underlying instruments	$ 2170	$ 2175

000's OMITTED

[FR Doc. 97–33406 Filed 12–29–97; 8:45 am]
BILLING CODE 8010–01–C

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–39455; File No. S7–31–97]

RIN 3235–AG18

Net Capital Rule

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is proposing for comment amendments to Rule 15c3–1 (''net capital rule'' or ''Rule'') under the Securities Exchange Act of 1934 (''Act''), regarding the Commission's capital requirements for broker-dealers. The proposed amendments, if adopted, would alter the charges, or ''haircuts,'' from net worth in computing net capital for certain interest rate instruments, including government securities, investment grade nonconvertible debt securities, certain mortgage-backed securities, money market instruments, and debt-related derivative instruments.

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

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 10–9, Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–31–97. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, at 202/942–0132; Peter R. Geraghty, Assistant Director, at 202/942–0177; Thomas K. McGowan, Special Counsel, at 202/942–4886; Christopher M. Salter, Attorney, at 202/942–0148; or Gary Gregson, Statistician, at 202/942–4156; Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 2–2, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction.

The Commission's net capital rule, Rule 15c3–1, is intended to ensure that broker-dealers have sufficient liquid capital to protect the assets of customers and to meet their responsibilities to other broker-dealers.[1] When calculating the value of their assets for the purposes of establishing their net capital under Rule 15c3–1, broker-dealers must reduce the market value of the securities they own by certain percentages, or haircuts. Reducing the value of securities owned by broker-dealers for net capital purposes provides a capital cushion against adverse market movements and other risks faced by the firms, including liquidity and operational risks.[2]

The amendments proposed in this release (the ''Proposed Amendments'') would change the haircuts applicable to most interest rate instruments held in a broker-dealer's proprietary account. The Proposed Amendments are similar in scope to the ''standard approach'' adopted by the Basle Committee on Banking Supervision (''Basle Committee'') in its amendments to the Basle Capital Accord for market risk arising from interest rate products.[3] The amendments adopted by the Basle Committee are discussed more fully in the text below.

A. Fixed Income Products Proposal

The Commission is proposing for comment an amendment to the net capital rule regarding the method of computing the haircuts applicable to interest rate products. The Proposed Amendments would treat most types of interest rate products as part of a single portfolio. Under the Proposed Amendments, the net capital rule would recognize various hedges among a portfolio of government securities,[4] investment grade nonconvertible debt securities (or corporate debt securities), Pass-Through Mortgage-Backed Securities,[5] repurchase and reverse repurchase agreements, money market instruments,[6] and futures and forward contracts on these debt instruments, and other types of debt-related derivatives (''Fixed Income Products''). Consequently, the Proposed Amendments should better match capital charges with actual market risk hedging practices employed by broker-dealers. One result of the Proposed Amendments is that positions may be moved into a registered broker-dealer from an unregistered affiliate to take advantage of the single portfolio concept in calculating haircuts, which should reduce capital charges.[7]

Haircuts for municipal securities and non-investment grade debt securities are not included in the Proposed Amendments. Municipal securities would be treated separately under the net capital rule because their market price depends on tax issues to a much greater extent than other debt instruments. Non-investment grade debt securities are excluded from the Proposed Amendments because their price movements tend to be based primarily on issuer-specific factors, much like equity securities. In addition, the Proposed Amendments will not recognize hedges among interest rate instruments denominated in different currencies because available evidence suggests that while correlations of interest rate products denominated in different currencies are generally positive, they are relatively low compared with correlations for securities denominated in the same currency. Therefore, broker-dealers would be required to separately calculate for each currency their haircuts for Fixed Income Products denominated in that currency.

The Commission requests comment regarding the Proposed Amendments, and in particular, solicits comment on whether the Proposed Amendments

[1] 17 CFR 240.15c3–1

[2] Liquidity risk is the risk that a firm will not be able to unwind or hedge a position. Operational risk is the risk of financial loss to the firm from human error or defects in maintaining the firm's operating systems.

[3] The Governors of the G–10 countries established the Basle Committee on Banking Supervision in 1974 to provide a forum for ongoing cooperation among member countries on banking supervisory matters.

[4] 15 U.S.C. 78c(a)(42).

[5] For the purposes of the proposed Rule, ''Pass-Through Mortgage-Backed Securities'' means any security issued under the sponsorship of the United States or any agency thereof that represents a pro rata interest or participation in the principal and interest cash flows generated by a pool of mortgage loans of which at least 95% of the aggregate principal is composed of fixed rate residential mortgage loans on one to four family homes, including five and seven year mortgage loans with balloon payments at maturity. Under the proposed rule, multifamily, adjustable rate, commercial, and mobile home mortgage loans are not considered Pass-Through Mortgage-Backed Securities.

[6] Money market instruments are defined in the Proposed Amendments as commercial paper rated in one of the three highest categories by at least two nationally recognized statistical rating organizations, and negotiable certificates of deposit and bankers acceptances issued by a bank as defined in Section 3(a)(6) of the Act.

[7] In a companion release being issued contemporaneously with this release, the Commission is proposing a limited regulatory system for a class of registered dealers active in over-the-counter derivatives markets that will provide additional incentives to move positions out of an unregistered affiliate into a registered broker-dealer. For example, the Commission is proposing to allow these dealers to use value-at-risk models for determining market risk capital charges. These models would recognize more offsetting among positions than the approach being proposed in this release. Securities Exchange Act Release No. 34–39454 (December 17, 1997).

comport with how broker-dealers currently hedge their positions in interest rate products, what instruments are used to hedge interest rate risk, how capital charges for Fixed Income Products will differ for particular firms under this proposal from the current Rule, and alternative methods of calculating haircuts on interest rate products.

B. Background

The Commission is proposing for comment the Proposed Amendments as the result of its efforts with the Basle Committee and the International Organization of Securities Commissions (''IOSCO'') to develop a consensus among different countries on the conceptual framework underlying capital standards for interest rate instruments. In 1988, the Basle Committee adopted its Capital Accord regarding a minimum risk-based capital framework for banks. At that time, the Capital Accord was designed primarily to deal with the credit risk in a bank's loan portfolio, but the Basle Committee recognized that the capital adequacy portion of the Capital Accord would have to be broadened to cover market risk.[8]

In January 1996, the Basle Committee amended its Capital Accord to include a comprehensive system of capital charges based on the market risk in a bank's securities trading portfolio. Under the Capital Accord, subject to the approval of applicable national banking authorities, a bank may choose from two alternative methods for calculating its market risk capital requirement. One method bases the capital charges on a table of fixed-percentage charges similar to the Proposed Amendments. The other method approved by the Basle Committee allows certain banks to use value-at-risk models for calculating their market risk capital requirements.

In May 1993, the Commission issued a Concept Release[9] soliciting comments on alternative methods for computing haircuts on derivative financial instruments. Despite that release's focus on derivative financial instruments, the Commission intended to commence a broader dialogue with the industry regarding how the Rule could better reflect the market and credit risks inherent in a broker-dealer's proprietary securities portfolio. At that time, the Commission envisioned a multi-step revision of the net capital rule that would substantially change how broker-dealers calculate market and credit risk haircuts arising from their proprietary positions.

In 1995, the Commission received the Framework for Voluntary Oversight of the Derivatives Policy Group (''DPG''), consisting of the six U.S. securities firms most active in the over-the-counter (''OTC'') derivatives market. The DPG agreed to four major subjects of controls: management controls, enhanced reporting, evaluation of risk in relation to capital, and counterparty relationships. The DPG's evaluation of risk envisioned a capital-at-risk computation that would enable the Commission to assess the market risk in each firm's OTC derivative positions.

At about the same time, the Commission proposed for comment amendments to the net capital rule that would allow broker-dealers to use a theoretical option pricing model to determine capital charges for listed equity and currency options, and related positions.[10] At that time, the Commission also authorized the Division of Market Regulation (''Division'') to issue a no-action letter that permitted broker-dealers to use the theoretical option pricing model to calculate haircuts for listed options and related positions. In February 1997, the Commission adopted final amendments to the net capital rule, substantially as proposed, that allow firms to use theoretical option pricing models in determining net capital requirements for listed options and related positions.[11]

The Commission has also issued a concept release simultaneously with this release that requests comment on how the net capital could be amended, including whether statistical models should be used for regulatory capital purposes.[12] The method for calculating haircuts on Fixed Income Products proposed in this release represents one alternative for amending the Commission's net capital rule.

II. Fixed Income Products

A. Current Haircut Treatment of Debt Securities

Haircut charges on interest rate securities are based on their residual times to maturity and credit quality. This results in securities with longer residual maturities receiving greater haircuts than similar securities with shorter residual maturities. The charges on adjustable rate debt securities are based generally on residual maturity. The current Rule divides interest rate securities into categories and subcategories. The current Rule permits complete or partial netting (depending on the type of security) within a subcategory, and it permits lesser netting within and between categories.

Haircuts for each type of interest rate security (*e.g.*, government, municipal, and nonconvertible debt securities) are computed separately from other types of interest rate securities, with limited exceptions, restricting a broker-dealer's ability to reduce its haircut on offsetting positions among different types of securities. For example, the net capital charges for portfolios of government securities tend to be lower than for other debt instruments because of significant, if not complete, hedging allowances among government securities. The current net capital rule recognizes to a lesser extent hedges between corporate bonds and government securities.[13]

B. The Proposed Amendments

1. General Description

Under the Proposed Amendments, a broker-dealer would calculate two haircuts on its Fixed Income Products: a General Market Risk Charge and a Specific Market Risk Charge.[14] General market risk is the risk that the price of the Fixed Income Product will change because of market-wide changes in interest rates. The General Market Risk Charge is intended to cover market risk factors common among different types of interest rate instruments. Specific market risk is the risk of an adverse price movement for a security which is unique to a particular issue, but differs from a credit risk charge based on the risk that a counterparty will not be able to fulfill its obligations.

By separating the haircut for Fixed Income Products into two components, the Proposed Amendments recognize offsetting among the changing market values of many different types of securities, such as government securities and corporate debt, arising from general market-wide changes in interest rates, and use the Specific Market Risk Charge to capture risk that is not offset through these hedges.

2. General Market Risk Charge

Under the Proposed Amendments haircuts on unhedged positions in Fixed Income Products would not change

[8] The Basle Accord is a common measurement system and a minimum standard for capital adequacy of international banks in the Group of Ten countries.

[9] Securities Exchange Act Release No. 32256 (May 4, 1993), 58 FR 27486 (May 10, 1993) (''Concept Release'').

[10] Securities Exchange Act Release No. 33761 (March 15, 1994), 59 FR 13275 (March 21, 1994).

[11] Securities Exchange Act Release No. 38248 (February 6, 1997), 62 FR 6474 (February 12, 1997).

[12] Securities Exchange Act Release No. 34–39456 (December 17, 1997).

[13] 17 CFR 240.15c3–1(c)(2)(vi)(F)(*3*).

[14] Appendix I is an example demonstrating how the haircuts are calculated on a hypothetical portfolio under the Proposed Amendments.

significantly from the current net capital rule. However, as noted above, Fixed Income Products under the proposal would be treated as part of a single portfolio which would allow for greater hedging benefits when calculating the General Market Risk Charge than under the current Rule. In general, most Fixed Income Products would be slotted into five maturity bands, or zones, and fifteen sub-zones based on their residual maturity.[15] For each sub-zone or zone, there would be an associated haircut with offsets across different maturities.

Similar to the current net capital rule, the Proposed Amendments would impose progressively larger haircuts as the securities increase in maturity. This recognizes that the price volatility of Fixed Income Products generally increases as their residual maturity increases. Further, the Proposed Amendments assume that short and long term interest rates tend to move together and that a movement in the market value of a Fixed Income Product with a short residual maturity will, to some degree, be offset by the price movement in the market value of an opposite position in a Fixed Income Product with a longer residual maturity. However, the degree to which prices of Fixed Income Products with different maturities move in the same direction after a change in interest rates is smaller as their residual maturities get farther apart. In other words, the price movements of debt instruments of similar residual maturities are more highly correlated than the price movements of debt instruments with significantly different residual maturities.

The calculation of the General Market Risk Charge incorporates the assumptions described above regarding the correlation of debt instruments based on residual maturity. Offsetting positions in Fixed Income Products positions with the same residual maturities are subject to a haircut. Any remaining amounts not offset within the same sub-zone may then be netted against positions with different residual maturities, albeit with greater haircuts. Essentially, this method of calculating haircuts for a mixed portfolio is designed to account for risk across the interest rate curve and the basis risk for those securities which are closely related in maturity.

Prior to calculating the General Market Risk Charge, a broker or dealer must place each long or short Fixed Income Product into one of 15 designated sub-zones. The use of 15 sub-zones provides for a capital cushion for offsetting positions with significantly different residual maturities and reflects the fact that prices of Fixed Income Products tend to move at increasingly different rates when their residual maturities are further apart.

Fixed Income Products, with certain exceptions, are placed into the sub-zones based on residual maturity, while certain variable rate instruments are categorized by the time to their Next Interest Reset Date.[16] By categorizing Fixed Income Products other than by residual maturity, the Proposed Amendments may more accurately group Fixed Income Products with similar market risks into the same sub-zone. Mortgage-Backed Pass-Through Securities fit into the sub-zones based on their market value relative to par value. Deep discount bonds (which include bonds that do not pay current interest) are slotted into one of two sub-zones that apply only to deep discount bonds. Each leg of an interest rate swap is translated into a synthetic bond with a market value equal to the value of the notional coupon and a maturity equal to the residual maturity of the swap or the time until the Next Interest Reset Date, if appropriate. These synthetic bonds then are placed into the sub-zones like any other Fixed Income Product.[17]

The General Market Risk Charge is defined as the sum of (A) the Sub-Zone Charges, (B) the Zone Charges, (C) the Between Zone Charges, and (D) the Residual Charge, each of which is described below.

The percentage haircut for particular sub-zones, or market risk weight, ranges from 0 percent for a Fixed Income Product with one month or less to maturity to 12 percent for deep discount bonds with more than 20 years to maturity. These percentages were developed based on two components. The first component is the modified duration of a bond with a maturity equal to the mid-point of the respective sub-zone, assuming an 8 percent interest rate environment and an 8 percent coupon. The second component is an assumed change in yield that is designed to cover about two standard deviations of one month's yield volatility in most major markets. The two components are multiplied to give a percentage weighting factor for each sub-zone.

a. *Sub-Zone Charge*. Because most hedged positions among Fixed Income Products are not perfect hedges, the Proposed Amendments place a charge, the Sub-Zone Charge, on hedged positions to reflect the broker-dealer's residual exposure to market risk from the hedge. The Sub-Zone Charge is calculated in two steps. The first step is to calculate the Sub-Zone Charge for offsetting swap positions, and the second step is to calculate the Sub-Zone Charge for other offsetting positions within the same sub-zone. The Sub-Zone Charge for offsetting swaps is calculated separately from other offsetting positions because of the significantly higher degree of correlation among offsetting swaps positions compared to hedges among other types of debt instruments.

The Sub-Zone Charge for offsetting swaps applies only to hedged positions exclusively between interest rate swaps in the same sub-zone. The Sub-Zone Charge for offsetting swap positions is determined by multiplying the lesser value of the long or short swap positions in each sub-zone by the applicable sub-zone percentage; then multiplying that product by one percent. The remaining swap positions are then combined with other Fixed Income Product positions in that sub-zone.[18]

The Sub-Zone Charge for positions other than swaps is calculated by multiplying the lesser value of the long or short positions in each sub-zone by the applicable sub-zone percentage; and then multiplying that product by five percent. The sum of the Sub-Zone Charge for offsetting swaps and the Sub-Zone Charge for other positions, for each sub-zone, is the total Sub-Zone Charge. The difference between the aggregate values of the long and short positions in these Fixed Income Products in each sub-zone (the unhedged amount), multiplied by the applicable sub-zone percentage, is the Long or Short Sub-Zone Carry-Forward

[15] The zone and sub-zone grid may be found in section vi(A)(3)(i)(A) of the Proposed Amendments.

[16] Next Interest Rate Reset Date means the maturity date of the instrument or, if earlier, the next date as of which the interest rate on the instrument is subject to being either increased or decreased, as applicable, by an amount that is at least 0.5% greater or lesser than the current interest rate on the instrument. The requirement that the rate be able to move by at least 0.5% excludes those securities that are at or near their rate cap and therefore tend to behave like a fixed rate security.

[17] The reasons for slotting these assets into the sub-zones other than by residual maturity is explained in further detail in Section II.C. of this release.

[18] For example, if a broker-dealer had a $20 million long swap position and a short swap position of $30 million in sub-zone (ii), the sub-zone disallowance for offsetting swaps would be equal to the product of $20 million × 0.2%×1% (or $400); the difference between the $30 million short position and the $20 million long position would be added to the aggregate value of the broker-dealer's short positions in other securities in sub-zone (ii) for the purposes of calculating the sub-zone disallowance for other securities.

Amount for each sub-zone.[19] The Sub-Zone Carry-Forward Amounts are used to calculate the Zone Charge.

b. *Zone Charge*. Similar to the Sub-Zone Charge, the Zone Charge is the haircut on hedged positions within the same zone. Because there will be greater disparity among the residual maturities of these positions, the percent charge for these offsetting positions is higher than the Sub-Zone Charge.

In calculating the Zone Charge, the Long and Short Sub-Zone Carry Forward Amounts for each zone are totaled separately and are identified respectively as the Long and Short Zone Positions. The Zone Charge for each zone equals the lesser of the Long or Short Zone Positions for each Zone multiplied by the percentage set forth in the Rule's Zone Charge provisions.[20] The difference between the Long and Short Zone Positions in each zone (the unhedged amount) is called the Long or Short Zone Carry-Forward Amount for that zone and is used to calculate the Between Zone Charge.[21]

c. *Between Zone Charge*. The Between Zone Charge is the charge for offsetting positions in different zones. As the disparity between the residual maturities of the hedged positions grows, the percentage charge increases because the positions reflect increasingly imperfect hedges. Calculating the Between Zone Charge requires two separate computations: one for adjacent zones and the other for non-adjacent zones. Because the difference in the residual maturities of offsetting positions in non-adjacent zones may be much greater than between positions in adjacent zones, the charges are greater for offsetting positions in non-adjacent zones.

The Between Zone Charge for adjacent zones is arrived at by multiplying the lesser of the Long or Short Zone Carry-Forward Amounts in two adjacent zones by the Between Zone Charge percentages.[22] The difference between the Long and Short Zone Carry-Forward Amount in two adjacent zones (the unhedged amount) may be used to offset positions in other adjacent zones. Any remaining Long and Short Zone Carry-Forward Amounts not offset by amounts in adjacent zones is called the Long or Short Between Zone Carry-Forward Amount.

The Between Zone Charge for non-adjacent zones is arrived at by multiplying the lesser of the Long or Short Between Zone Carry-Forward Amounts by the Between Non-Adjacent Zone Charge percentages.[23] Generally, this permits a substantial amount of netting on a weighted basis among positions that vary in maturities, some as far apart as twenty years.

d. *Residual Charge*. The Residual Charge consists of any remaining Between Zone Carry-Forward Amounts that have not been offset. For the purposes of the Proposed Amendments, these are the equivalent of unhedged positions.

The Commission requests comment on the Sub-Zone, Zone, Between Zone and Residual Charges, and how these Charges may be modified.

3. Specific Market Risk Charge

Fixed Income Products, with the exception of government securities and synthetic bond positions, are subject to a Specific Market Risk Charge. A broker-dealer's total Specific Market Risk Charge is the sum of the charges for each individual Fixed Income Product. The Specific Market Risk Charge is intended to address issuer-related and liquidity risks associated with the underlying instruments. There is no need for this Charge for synthetic bonds which do not have identifiable specific risks. This Charge, as noted above, has no relationship to a credit charge for counterparty risk in derivative non-exchange traded instruments.

The Specific Market Risk Charge is a prescribed percentage of the market value of the instrument. The two factors used in determining the percentage rate for this Charge are the maturity of the instrument and whether its interest rate is fixed or adjustable.

The Specific Market Risk Charge may not be reduced by offsetting positions in different securities of the same issuer or securities of different issuers because these securities and issuers may have different liquidity and issuer risks which might prevent correlated market movements.

C. Treatment of Specific Fixed Income Products

Provided below is a description of how haircuts are presently calculated for the various types of Fixed Income Products affected by the proposed amendments and how the haircuts for those Fixed Income Products would be calculated under the Proposed Amendments. The Commission request comment on the proposed net capital treatment of each of the interest rate instruments discussed below.

1. Government Securities

Currently, the government securities haircut schedule, set forth in paragraph (c)(2)(vi)(A) of the Rule, separates government securities into four categories and twelve subcategories. Each subcategory includes a prescribed band of maturities.[24] The haircut for each subcategory, assuming no other netting, is the net position in a particular subcategory multiplied by a specified percentage, or haircut.[25] The haircuts for government securities range from 0 percent for securities with a residual maturity of less than three months to 6 percent for securities with a residual maturity of 25 years or more. The charge for each category is the net of the aggregate charges on the long subcategory positions and the aggregate charges on the short subcategory positions in the category plus 50 percent of the lesser of the aggregate charges on the long or short positions.[26] For example, under the current Rule, a firm with a $40,000,000 long position in government securities with 16 months remaining maturity and a $10,000,000 short position in government securities with 30 months remaining maturity (both category 2 government securities), would take the following deduction for category 2:

[19] For example, a broker-dealer that has positions in sub-zone (ii) other than swap positions, equal to a long position of $10 million, a short position of $5 million, and $2 million in a non-offsetting short swap position that carried forward, the sub-zone disallowance would be equal to $7 million × 0.2%×5% (or $700). The Long Sub-Zone Carry-Forward Amount would be $3 million × 0.2% (or $6,000).

[20] See paragraph (c)(2)(vi)(A)(*3*)(*iii*)(*A*) of the Proposed Amendments.

[21] If in Zone 1, a firm had a $10,000 Long Sub-Zone Carry-Forward Amount from sub-zone (ii), and a $4,000 Short Sub-Zone Carry-Forward Amount from sub-zone (iii), the Zone Charge would be $4,000×0.25 (or $1,000). The Long Zone Carry-Forward Amount would be $10,000 less $4,000, or $6,000.

[22] See paragraph (c)(2)(vi)(A)(*3*)(*iv*)(*A*) of the Proposed Amendments.

[23] If a broker-dealer had a Long Zone Carry-Forward Amount of $6,000 from Zone 1 and a Short Zone Carry-Forward Amount of $10,000 from Zone 2, the Between Zone Disallowance would be $6,000×50% (or $3,000). The remaining Short Zone Carry-Forward Amount from Zone 2 ($4,000) may be used to offset long amounts in Zone 3 or Zone 4.

[24] Category 1 covers securities with a residual maturity of less than 12 months to maturity. Category 2 covers securities from 1 year to 3 years. Category 3 covers securities from 3 years to 10 years. Category 4 covers securities over 10 years.

[25] For example, the haircut for a broker-dealer with a $7 million long position and a $4 million short position in Treasuries with remaining maturities between 9 months and one year would be $3 million multiplied by 1%, or $30,000.

[26] See the text.

	Long	Short	Net	%	Haircut
(i)	40,000,000		40,000,000	1.5	600,000
(ii)		(10,000,000)	(10,000,000)	2.0	(200,000)
					400,000
	200,000×50%=				100,000
	Total Deduction				500,000

This treatment allows partial netting of long and short positions within a category. The current Rule also allows further netting of a position within one category and one in an adjacent category under certain circumstances, and permits the partial netting of certain corporate securities with government securities within certain limits. In sum, the current Rule permits limited offsets within categories, and complete offsets for certain offsetting long and short positions (*e.g.*, those in the same subcategory). A broker-dealer that has been designated as a primary dealer by the Federal Reserve Bank of New York may reduce its haircut charges on government securities by 25 percent if it maintains a minimum tentative net capital of at least $50 million.[27]

Under the Proposed Amendments, government securities would not be subject to a Specific Market Risk Charge. With respect to the General Market Risk Charge, under the Proposed Amendments, government securities generally would be placed into one of the fifteen sub-zones based on residual time to maturity. Because the Proposed Amendments adopt a portfolio view for calculating haircuts by allowing all types of Fixed Income Products (with certain exceptions) to be combined into the same sub-zones, the Proposed Amendments would expand the ability of firms to hedge positions in government securities with other types of interest rate instruments.

2. Investment Grade Nonconvertible Debt Securities and Money-Market Debt Instruments

The current formula for determining haircuts for investment grade nonconvertible debt securities, consisting primarily of corporate debt securities, separates bonds into nine different categories based on residual maturity.[28] To be treated as an investment grade nonconvertible debt security, the security must not be traded flat or in default as to principal or interest and must be rated in one of the four highest rating categories by at least two nationally recognized statistical rating organizations. Charges range from 2 percent for securities with less than 1 year residual maturity to 9 percent for securities with a residual maturity of 25 years or greater. The charge is applied to the greater of the long or short position in each category. Firms may also partially offset investment grade nonconvertible debt securities with government securities or other corporate securities with similar residual maturities.

Under the Proposed Amendments, investment grade nonconvertible debt securities as well as commercial paper, bankers acceptances, and certificates of deposit would be subject to the Specific Market Risk Charge as well as the General Market Risk Charge. The criteria for determining whether the paper is investment grade would be the same as under the current net capital rule. The Specific Market Risk Charge for fixed rate investment grade nonconvertible debt ranges from 0.25 percent to 1.6 percent. As with government securities, fixed rate investment grade nonconvertible debt would be placed into the sub-zones based on residual maturity to compute the General Market Risk Charge.

Adjustable rate investment grade nonconvertible debt would be placed into the sub-zones generally based on the time to the Next Interest Reset Date if the interest rate on the instrument may be either increased or decreased, as applicable, by at least 0.5 percent. An adjustable rate investment grade nonconvertible debt instrument that is within 0.5 percent of its rate cap would be placed into the sub-zones based on its residual maturity. That instrument, although technically a variable rate instrument, would tend to behave like a fixed rate instrument given a change in interest rates.

Zero coupon and deep discount bonds[29] with residual maturities of six years or greater would be slotted, based upon residual maturity, into higher sub-zones than their residual maturities. Since their prices tend to be more volatile than coupon bonds of the same maturity, simply slotting such bonds according to residual maturity would underestimate risk and allow offsetting between positions that have substantially different risk profiles.

3. Pass-Through Mortgage-Backed Securities

Under the current net capital rule, mortgage-backed securities issued or guaranteed as to principal or interest by the United States or any agency thereof are treated as U.S. Government securities for the purposes of calculating haircuts. As with Treasury securities and other government securities, the current net capital rule bases the charges for mortgage-backed securities on their residual maturity and allows the securities to be offset against other government securities with similar residual maturities.

Mortgage-backed securities present particularly difficult net capital problems because partial payments of principal are generally made on a routine basis and often the entire principal is paid at an early stage in the maturity of the instrument. These principal payments or probabilities of prepayment drastically change the effective maturity of these instruments. Because the current Rule bases the charges for mortgage-backed securities on residual maturity rather than on criteria that better reflect their price volatility and duration, the haircut may overstate the risk on individual positions, and understate the risk on positions considered hedged by the Rule which may in fact not be adequately hedged. For example, the net capital rule may impose a large haircut on a position in mortgage-backed securities with a small duration but a long residual maturity but impose no charge for a position in the same mortgage-backed security hedged with a Treasury security with a similar residual maturity but with a longer duration.

It has been argued that a mortgage-backed security with a relatively high coupon rate should experience a significant amount of prepayment of principal and, consequently, will tend to act more like a security with less time

[27] 17 CFR 240.15c3–1(c)(vi)(A)(5).

[28] 17 CFR 240.15c3–1(c)(2)(vi)(F). Paragraph (c)(2)(vii) of the Rule regarding non-marketable securities would still apply to all inventory.

[29] Deep discount bonds are defined generally as Fixed Income Products that either do not pay interest or are priced at 50% or less of their par value. See paragraph (c)(2)(vi)(A)(*4*)(*iv*) of the Proposed Amendments.

to maturity. Based on the apparent correlation between the price of an instrument and its probable maturity, the Division issued a no-action letter permitting firms to place certain mortgage-backed securities into the government securities haircut categories of the current net capital rule based on their market price relative to their par value.[30]

The proposed rule incorporates this approach and allows firms to hedge Pass-Through Mortgage-Backed Securities[31] against other Fixed Income Products, consistent with the general intent to allow some hedging of all interest rate instruments.

4. Futures and Forwards

The current net capital rule provides that capital charges for futures contracts are based on the margin requirement of the applicable commodity clearing organization, although these positions may be inserted into the present grid and treated like securities positions. The capital charge for forward contracts on securities is based on the underlying instrument.[32] There also are allowances made for offsetting positions under prescribed circumstances.

As proposed herein, all futures and forwards on Fixed Income Products will be included in the General Market Risk sub-zones. A future or forward would be incorporated into the grid by inserting into the sub-zones any of the instruments deliverable against the future or the forward, up to the market value of the future or forward. Once the deliverable instrument is placed into a sub-zone, it would be subject to the same haircuts and offsets as other Fixed Income Products. However, there is no Specific Market Risk Charge for futures and forwards on Fixed Income Products.

5. Interest Rate Swaps

A basic interest rate swap or a ''plain vanilla'' swap involves the exchange of specified or determinable cash flows at specified times based upon a notional amount. The notional amount is not exchanged but is used to calculate the fixed or floating rate interest payments made under the swap. Presently, the current net capital rule generally treats any net interest payment due from an interest rate swap as an unsecured receivable (absent the presence of liquid collateral) that must be deducted from the broker-dealer's net worth in arriving at its net capital. The broker-dealer also is required to take an additional haircut on the notional amount of the swap as the market risk haircut.

The proposed rule would require that interest rate swaps be placed into the General Market Risk sub-zones by converting each side of the swap into synthetic bond positions based on the notional amount of the swap and the interest rates against which payments are calculated. A broker-dealer would calculate the market value of the synthetic bond by adjusting the value of the notional amount under the swap for changes in interest rates in the same way that a debt security is marked-to-market. These synthetic bonds then would be placed into the appropriate sub-zones. As with all synthetic bond positions, these positions would not be subject to Specific Market Risk Charges.

Any obligation to receive payments under the swap would be categorized as a long position; any obligation to make payments under the swap would be characterized as a short position.[33] A position receiving or paying based on a floating interest rate generally will be treated as having a maturity equal to the period until the Next Interest Reset Date; a position receiving or paying based on a fixed rate will be treated as having a maturity equal to the residual maturity of the swap.

Any interest rate portion of a swap that pays or receives according to the value of one or more equity securities (*i.e.,* an equity swap) would be slotted into the General Market Risk sub-zones. The equity portion of the swap would be treated, for purposes of the net capital rule, as an equity security or equity index, as appropriate, with a market value equal to the notional value of the swap.

As noted above, the Sub-Zone Charges, or haircuts, for synthetic bond equivalent positions derived from interest rate swaps would be calculated separately from other Sub-Zone Charges (*e.g.,* government securities and Pass-Through Securities) under the Proposed Amendments. Synthetic bond equivalents derived from interest rate swaps, when offset against one another, would be subject to a 1 percent Sub-Zone Charge, instead of the 5 percent Sub-Zone Charge applicable to non-swap positions.

6. Repurchase (''Repo'') and Reverse Repurchase Agreements (Reverse Repo)

Under the current Rule, a broker-dealer does not take a haircut on repo or reverse repo transactions[34] to reflect market risk. However, a broker-dealer engaging in reverse repo transactions must maintain additional net capital if it is holding collateral that far exceeds the contract price under the agreement.[35] In addition, a broker-dealer must also subtract from its net worth any deficiency arising under a reverse repo if the market value of the securities it holds is less than the contract price.[36] For repo transactions, Rule 15c3–1 requires a broker-dealer to take a deduction from its net worth if it has delivered to the counterparty securities in excess of the contract price of the repo, under certain circumstances.[37]

The Commission is proposing that repos and reverse repos be incorporated into the Proposed Amendments by treating each repo and reverse repo transaction as a short or long position, respectively, in a synthetic bond with a maturity equal to that of the contract or the Next Interest Rate Reset Date, whichever is less. This would allow repos and reverse repos to act as hedged positions where appropriate. In addition, the Commission also requests comments on whether these should be marked-to-market daily for net capital purposes in the same manner that a Treasury security is marked-to-market for a change in interest rates.

D. Product Specific Issues

Although the Proposed Amendments recognize, for net capital purposes, offsetting positions among most types of interest rate products, the Commission believes that it is desirable to expand the proposal to permit offsetting among additional types of interest rate products. Five different types of interest rate products that are not included in the proposal are described below, and

[30] Letter regarding Pass-Through Mortgage Securities (December 30, 1996).

[31] *Supra* note 5.

[32] The general net capital treatment of forwards on commodities (other than foreign currencies) is set forth in Appendix B of Rule 15c3–1. Broker-dealers must deduct 20% of the market value of uncovered forward contracts to account for market risk. Broker-dealers incur no market risk deduction if the forward is currently registered as deliverable on a contract market and is covered by an open futures contract or by a commodity option on a physical. Broker-dealers incur a market risk deduction of 10% for other forward contracts to purchase or sell commodities which are not registered as deliverable that are covered by an open futures contract.

[33] For example, an interest rate swap under which a firm is receiving payments based on a floating rate interest and paying based on a fixed interest rate would be treated as a long position in a floating rate instrument with a maturity equivalent to the period until the Next Interest Reset Date and a short position in a fixed rate instrument with a maturity equivalent to the residual life of the swap.

[34] A repurchase agreement, or repo, is an agreement between a buyer and a seller, usually of U.S. government securities, where the seller agrees to repurchase the securities from the buyer at an agreed upon price and, usually, on a stated date. In a reverse repurchase agreement, the broker-dealer has purchased the securities from the counterparty and has agreed to resell them at the agreed upon price.

[35] 17 CFR 240.15c3–1(a)(9).

[36] 17 CFR 240.15c3–1(c)(2)(iv)(F)(*2*).

[37] 17 CFR 240.15c3–1(c)(2)(iv)(F)(*3*).

the Commission seeks comment on how these instruments could be incorporated into the Proposed Amendments.

1. Mortgage-Backed Securities and Certain Non-Qualified Mortgage Pass-Through Securities

As noted, the Commission believes it is desirable to include all mortgage securities into a unified haircut methodology to give more recognition to hedging strategies employed by broker-dealers. Nonetheless, the Commission's proposal does not include certain mortgage securities, such as collateralized mortgage obligations (''CMOs''), interest-only mortgage securities (''IOs''), principal-only mortgage securities (''POs''), and mortgage pass-through securities that are not collateralized by level payment loans on one to four family homes.

There have been several alternatives suggested by broker-dealers to deal with these securities. One would slot CMOs into the maturity bands for interest rate products based on one day less than one-half the stated maturity of the CMO. While this proposal may provide adequate levels of capital for unhedged positions, the proposal does not appear to address the varied hedging strategies associated with CMOs. The second suggestion would slot CMO's into the various categories based on price, third party prepayment forecast systems, and historical volatility for the various classes of CMOs. This method would reflect more closely the various hedging strategies involving CMOs, but is both complex and based on subjective judgements regarding prepayments of principal. A third alternative would be to allow some type of internal modelling to serve as the basis for calculating haircuts on these instruments. This presents substantial examination burdens and might lead to excessive leverage and inadequate capital levels. Each alternative, however, deserves consideration, and the Commission solicits comment on each of these alternatives.

2. Non-Investment Grade Debt

The Proposed Amendments also do not include high-yield bonds (also known as ''junk'' bonds). Under the current Rule, non-investment grade bonds having a ready market are treated as if they were equity securities requiring a capital charge of at least 15 percent. In a no-action letter, the Division stated that whether these securities had a ready market depended on the amount of the initial issuance, whether the securities can be publicly sold without registration with the Commission, and whether there is currently available public information.[38]

The Commission preliminarily believes that it is inappropriate to permit non-investment grade bonds to be offset, or hedged, with other debt instruments because non-investment grade bond prices are much more dependent on issuer-specific risk factors, similar to those important in the pricing of equity securities, than on general market risk factors.[39] However, the Commission seeks comment on alternative methods of determining haircuts for non-investment grade bonds and whether those securities should be used to offset positions in other securities.

3. Interest Rate Instruments Denominated in Foreign Currencies

Under this proposal, instruments denominated in different currencies would not be permitted to be offset against one another. Thus, broker-dealers would have to calculate their market risk haircut for Fixed Income Products separately for each currency in which those instruments are denominated. Available evidence suggests that while correlations of interest rate products denominated in different currencies are often positive, they are relatively low when compared with correlations for securities denominated in the same currency. The Commission solicits comment on the appropriateness of permitting different currency interest rate instruments to offset one another. The Commission also requests comment on methods for addressing the foreign exchange risk of these securities.

4. Forward Rate Agreements and Eurodollar Futures

In a forward rate agreement, two parties agree on a fixed interest rate that is to be paid on a notional deposit of a specified maturity commencing at a future date. A Eurodollar future is a U.S. dollar denominated, cash settled futures contract where the underlying instrument is a Eurodollar[40] time deposit commencing on a specific forthcoming date. These instruments are commonly used to offset future payment streams stemming from obligations of current interest rates, including interest rate swaps. The Commission seeks comment on how these instruments may be incorporated into the net capital rule.

5. Fixed Income Options

Options on U.S. Treasury Securities and certain debt instruments issued by agencies of the U.S. Government and options on futures on these securities (''Fixed Income Options'') can comprise an important element of a broker-dealer's interest rate book. As discussed earlier, the Commission recently adopted amendments to the net capital rule that permit an options pricing model to be used to determine capital charges for listed options and their related positions. The Commission is seeking comment on whether it may be possible to use a similar approach to determine haircuts on over-the-counter Fixed Income Options.

One alternative would be to reprice the option, as with listed options, after changing the price of the underlying security based on specific market ''shocks'' specified by the Commission. For example, for domestic interest rate products, the entire universe of underlying securities could be represented by the U.S. Treasury yield curve, which includes market yields for 3-month to 30-year securities. The broker-dealer would then subject its Fixed Income Options portfolio to different types of shocks. One type of shock could be obtained by imposing a parallel shift in the yield curve. A second type of shock could be obtained by changing the slope of the yield curve. Third, the implied volatilities along the yield curve could also be increased or decreased.

The Commission seeks comment on the feasibility of using an options pricing model with prescriptive shocks for over-the-counter Fixed Income Options as well as suggestions for other methods for calculating haircuts on Fixed Income Options.

E. Non-Model Based Alternatives to the Proposed Amendments

The Commission believes that the maturity-based Proposed Amendments for Fixed Income Products meet two important objectives. First, the Proposed Amendments are an objective method for calculating regulatory net capital

[38] See Letter Regarding Ready Marketability of Noninvestment Grade Debt (February 14, 1994).

[39] As indicated by a number of studies, movements in most non-investment grade bonds are not highly correlated with movements of high-quality bonds. One study found a higher correlation between a long-term high-yield (*i.e.*, junk bond) index and the S&P 500 index than it found between the high-yield index and U.S. Treasuries or investment grade corporate bonds. (See Paul H. Ross, et al., High-Yield Corporate Bonds: An Asset Class for the Allocation Decision, Salomon Brothers (February 1989)). The study found a 0.93 correlation between AA-rated corporate bonds and U.S. Treasuries, but only a 0.45 correlation between the high-yield index and U.S. Treasuries. The correlation of the high-yield index with the S&P 500 was 0.63.

[40] A Eurodollar is U.S. currency held in banks outside the United States, mainly in Europe, and commonly used for settling international transactions.

whose results apply consistently to all broker-dealers. Second, the application and results of the Proposed Amendments can be readily verified by examiners and independent auditors. Importantly, the Proposed Amendments would differ from the current net capital rule in allowing broker-dealers to receive greater hedging benefits among a wider variety of interest rate instruments. Nonetheless, the Commission is aware that different entities may favor modifications or alternatives to the Proposed Amendments. The Commission solicits comment on the viability and the advantages and disadvantages of the Proposed Amendments, the alternative approaches described below, and any alternatives not discussed by the Commission in this release. In a separate release, the Commission is soliciting comments on the use of value-at-risk models for capital purposes.[41]

1. Duration

One alternative to the Proposed Amendments could be to use duration bands, instead of residual maturity bands, in determining the capital charges to be applied to specific positions in interest rate products. Duration is a mathematical concept which attempts to measure the sensitivity of bond prices to general interest rate changes. Generally, duration-based formulas express the weighted average time to payment of the cash flows of a bond (both interest and principal) where the weights are the present values of the cash flows themselves. Each cash flow is reduced to its present value. The point in time at which half of the cash flows (expressed in present value) would be received is commonly referred to as the duration of the bond.[42]

The Commission initially believes that a duration band analysis may be too complicated for calculating regulatory capital requirements; it requires examiners to re-calculate, on a daily basis, the duration of each Fixed Income Product in a firm's portfolio to reflect daily changes in interest rates. By basing haircuts on residual maturity instead of a daily duration calculation, the current net capital rule and the Proposed Amendments are computationally less intensive than a duration band approach. Nonetheless, the residual maturity method used in the current Rule and the Proposed Amendments are relatively close approximations to the duration method in determining capital charges for a hedged portfolio.[43] Consequently, the nominal increase in the precision of the price sensitivity estimate under the duration analysis over the residual maturity method may be outweighed by the costs associated with the greater complexity of the duration method.

2. Rolling Time-Band

One modification to the Proposed Amendments could be to eliminate the zones and instead determine offsets according to a ''rolling band approach'' between the fifteen different sub-zones, or maturity bands. Under this approach, the charge, or degree of offset, between opposite positions in different maturity bands would be computed based on the number of maturity bands that separate the long and short positions. For example, positions in adjacent maturity bands might be subject to a 20 percent charge, while positions separated by two maturity bands might be subject to a 30 percent charge, and so on. There would be a limit to how far apart the positions could be in the maturity bands and still be subject to an offset. While this approach refines the Proposed Amendments, the different ways a particular position could be offset may make this haircut calculation more complicated to program and to audit.

3. Cash-Flow Buckets

Another alternative to the Proposed Amendments would be to employ a cash flow-based approach. For example, a thirty-year Treasury bond would have 61 cash flows: 60 semi-annual interest payments for thirty years and a principal payment in the final year. Each cash flow theoretically could be inserted into the sub-zone corresponding to the time when that payment or receipt would be made. To the extent the expected payments and receipts in a particular sub-zone would not offset each other completely, a capital charge would be assessed on the net position. As with the current proposal, this approach also would require a charge on the matched position within a sub-zone to account for basis risk.

* * * * *

The Commission solicits comment on whether the potential benefits of each of these approaches outweigh their complexity, and encourages commenters to submit analysis or data on the likely costs of the alternative approaches. The Commission specifically requests comment on how the expected cash flows in Alternative 3 could be determined, especially for products whose cash flows are more difficult to predict, such as CMOs.

III. Costs and Benefits of the Proposed Rule Amendments and Their Effects on Competition

To assist the Commission in its evaluation of the costs and benefits that may result from the Proposed Amendments, commenters are requested to provide analyses and data relating to the costs and benefits associated with any of the proposals herein. In particular, the Commission requests comments on the potential costs for any necessary modifications to accounting, information management, and recordkeeping systems required to implement the proposed rule changes. The Commission estimates that approximately 1,350 broker-dealers will be affected by the Proposed Amendments. The Proposed Amendments have been tailored to minimize their burden on affected small broker-dealers while at the same time protecting the markets and investors. The Commission estimates that of the approximately 5,300 small broker-dealers registered with the Commission, only approximately 370 have proprietary positions in Fixed Income Products and are subject to the Rule. The Commission believes that the burden imposed upon broker-dealers will be significantly outweighed by the potential savings to broker-dealers from reduced capital requirements and increased efficiencies. The Commission requests comment on the extent to which the Proposed Amendments will reduce capital requirements. Commenters should provide estimates of the reduction in their capital requirements.

The Proposed Amendments provide broker-dealers the opportunity to reduce their capital charges. The Proposed Amendments change the haircuts applied to Fixed Income Products by combining different interest rate instruments into one haircut calculation that recognizes hedging among many more types of interest rate products than permitted under the current Rule. By recognizing more types of hedging

[41] Securities Exchange Release No. 34–39456 (December 17, 1997).

[42] The concept of modified duration is also commonly used. Modified duration is the price elasticity of a bond (*i.e.*, the percentage change in price for a one percent change in yield).

[43] If two securities have similar durations but different residual maturities, under the duration method they would receive a comparatively small haircut. Under the Proposed Amendments, the security with a longer residual maturity would tend to have a greater market value and would receive a comparatively larger haircut than the security with the shorter residual maturity. The residual amounts available for offset under the Proposed Amendments would tend to be roughly equal. Therefore, under the Proposed Amendments, the two positions would receive a capital charge similar to the charge under the duration method.

techniques, the Proposed Amendments should lower the haircuts for firms with well-hedged portfolios of Fixed Income Products and reduce a broker-dealer's incentive to fractionalize its business between the broker-dealer and its unregistered affiliate. Reducing a broker-dealer's need to fractionalize its securities business should allow a broker-dealer to increase its operational efficiency. Finally, by expanding the types of hedging recognized in the Rule, the Proposed Amendments should better reflect the hedging strategies currently used by broker-dealers.

The Commission preliminarily believes that the Proposed Amendments will promote both efficiency and capital formation. As previously discussed, the Proposed Amendments should provide broker-dealers the opportunity to increase operational efficiency by reducing the need to fractionalize its securities business. In addition, the Proposed Amendments should promote capital formation by reducing capital charges for well-hedged portfolios and by better reflecting the hedging strategies actually used by broker-dealers. This should allow broker-dealers greater freedom to invest assets or support underwritings thus promoting capital formation. Finally, a broker-dealer's operational efficiency should be increased as a result of allowing its current hedging strategies to be used in its calculation of required capital.

Section 23(a) of the Exchange Act [44] requires the Commission, when adopting or amending rules under the Exchange Act, to consider the impact the rule would have on competition and to refrain from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Commission has preliminarily considered the Proposed Amendments in light of this standard and believes that, if adopted, they would not impede competition. As previously discussed, the net capital rule is intended to ensure that broker-dealers have sufficient liquid capital to protect the assets of customers and to meet their responsibilities to other broker-dealers. When calculating its net capital, a broker-dealer reduces the market value of the securities it owns by certain percentages, or ''haircuts.'' Reducing the value of these securities provides a capital cushion should the securities portfolio decline in value. The Proposed Amendments change the haircuts applicable to the Fixed Income Products for all broker-dealers equally and, therefore, does not impede competition. The Proposed Amendments provide the same opportunities to all broker-dealers to improve the efficiency of their securities business. However, the Commission does recognize that these benefits come at the cost of greater computational complexity and it requests comment on the competitive impacts of this increased complexity.

[44] 15 U.S.C. 78w(a)(2).

IV. Summary of Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with the Regulatory Flexibility Act (''RFA''). [45] The analysis set forth in the IRFA relates to the Proposed Amendments. The IRFA states that the Proposed Amendments continue the Commission's efforts to revise Rule 15c3–1 by lowering haircuts on Fixed Income Products for a firm with a well hedged portfolio of Fixed Income Products and by reducing a broker-dealer's incentive to fractionalize its business between itself and an unregistered affiliate. Finally, the IRFA states that by expanding the types of hedges recognized in the Rule, the Proposed Amendments should better reflect the hedging strategies currently used by broker-dealers.

The IRFA sets forth the statutory authority for the Proposed Amendments Under Section 15(c)(3) of the Securities Exchange Act of 1934. [46] The IRFA also discusses the effect of the Proposed Amendments on small entities. Of the approximately 5,300 small broker-dealers registered with the Commission, approximately 370 are subject to the net capital rule that have proprietary positions in Fixed Income Products. Accordingly, the IRFA states that the Proposed Amendments would have a direct effect on approximately 370 out of 5,300 small broker-dealers. The IRFA also states that these small broker-dealers would have to adjust their processes and procedures for calculating net capital and that this would likely involve amending their computer information systems.

More specifically, some broker-dealers' computer information systems may not have the capability to capture and classify the information required to implement the changes as to certain instruments. For example, pass-through mortgage-backed securities are included in the Proposed Amendments provided that they are based on fixed rate residential mortgage loans on one to four family homes. Multifamily, adjustable rate, commercial, and mobile home mortgage loans are not included in the Proposed Amendments. Consequently, broker-dealers may need to modify their computer information systems to identify mortgage-backed securities by the criteria necessary to use the Proposed Amendments. The IRFA states that the Commission preliminarily believes that the modifications needed to comply with the Proposed Amendments should not be unduly burdensome, however, it does not currently have the information to quantify the costs associated with making these changes. Consequently, the IRFA requests comment on the costs associated with changing the computer information systems to comply with the Proposed Amendments. Commenters should provide detailed estimates of the costs to change their computer information systems.

The IRFA states that the Commission preliminarily believes that after affected broker-dealers change their processes, procedures, and computer information systems to reflect the Proposed Amendments, there will not be any continuing impact on these broker-dealers. However, the IRFA requests comments on any ongoing costs associated with complying with the Proposed Amendments. Commenters should provide detailed estimates of any ongoing costs they expect to incur.

The IRFA states that the Commission considered whether viable alternatives to the proposed rulemaking exist that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of proposed rules on small entities. More specifically, the Commission considered the following alternatives: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the rule, or any part thereof, for small entities.

The Commission believes that it would be inconsistent with the purposes of Rule 15c3–1 to exempt small entities from the Proposed Amendments or to provide an alternative net capital requirement including allowing small entities to continue to use the current capital requirements. Rule 15c3–1 is intended to protect the investing public by ensuring that broker-dealers have

[45] 5 U.S.C. 603.

[46] 15 U.S.C. 78o(c)(3)

sufficient liquid capital to protect the assets of customers and to meet their responsibilities to other broker-dealers. The Commission believes that the Proposed Amendments will enhance Rule 15c3–1's objectives by establishing more precise haircut charges that better reflect the risks associated with broker-dealers' Fixed Income Products positions and related hedging practices while ensuring that registered broker-dealers hold sufficient capital to maintain adequate liquidity to satisfy obligations to customers and other broker-dealers.

The IRFA states that the Commission preliminarily believes that the Proposed Amendments will not adversely affect small entities because they tend to own relatively few Fixed Income Products. As previously discussed, the Commission estimates that of the 5,300 small broker-dealers registered with the Commission, only 370 have proprietary positions in Fixed Income Products. In addition, the Proposed Amendments change the haircuts applicable to Fixed Income Products for all broker-dealers equally and thus provide the same opportunities to all broker-dealers to improve the efficiency of their securities business. However, the IRFA does request comment on whether the computational complexity of the amendments impedes a small business' ability to compete.

The IRFA includes information concerning the solicitation of comments with respect to the IRFA generally, and in particular, the cost of compliance with the proposed amendments and the number of small entities that would be affected by the Proposed Amendments. In addition, the IRFA solicits information for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, regarding the potential impact of the Proposed Amendments on the economy on an annual basis. Commentators are asked to provide empirical data to support their views. A copy of the IRFA may be obtained by contacting Christopher M. Salter, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 2–2, Washington, D.C. 20549.

V. Paperwork Reduction Act

Certain sections of Rule 15c3–1 contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*). The Commission has previously submitted the rule to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d), and OMB has assigned the rule OMB control number 3235–0200. Because the proposed rule changes should not materially affect the collection of information obligations under the rule, there is no requirement that the Commission resubmit the rule with the proposed amendments to OMB for review under the PRA.

VI. Statutory Analysis

Pursuant to the Act and particularly Section 15(c)(3), (15 U.S.C. 78o(c)(3)) thereof, the Commission is adopting amendments to § 240.15c3–1 of Title 17 of the Code of Federal Regulations in the manner set forth below.

List of Subjects in 17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule

In accordance with the foregoing, Title 17, chapter II, part 240 of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.15c3–1 is amended by revising paragraph (a)(1)(ii)(C), the introductory text of paragraph (c)(2)(vi), and paragraphs (c)(2)(vi)(A), (D)(*3*), and (G); removing and reserving paragraphs (c)(2)(vi)(E) and (F); and adding undesignated section headings before paragraphs (c)(2)(vi)(A), (c)(2)(vi)(D)(*3*) and (c)(2)(vi)(G) to read as follows:

§ 240.15c3–1. Net capital requirements for brokers or dealers.

(a) * * *

(1) * * *

(ii) * * *

(C) Exclude credit balances in accounts representing amounts payable for government securities, commercial paper, bankers acceptances, certificates of deposit included within the scope of paragraph (c)(2)(vi)(A) of this section not yet received from the issuer or its agent, and any related debit items from the Exhibit A requirements for 3 business days; and

* * * * *

(c) * * *

(2) * * *

(vi) Deducting the percentages of the market value of all securities, money market and other instruments, or options in the proprietary or other accounts of the broker or dealer or making such other charges as are determined pursuant to paragraphs (c)(2)(vi)(A) through (M) of this section or set forth in appendix A (§ 240.15c3–1a).

Fixed Income Products

(A)(*1*) The charge from market value for all Government Securities; Synthetic Bond Positions; nonconvertible debt securities (other than municipal securities), that have fixed maturity dates, are not traded flat or in default as to principal or interest, and are rated in one of the four highest rating categories by at least two nationally recognized statistical rating organizations; Money Market Debt Instruments; and futures or forward contracts for the purchase or sale of instruments covered by this paragraph (c)(2)(vi)(A) shall be equal to the sum of the Specific Market Risk Charges specified in paragraph (c)(2)(vi)(A)(*2*) of this section and the General Market Risk Charges specified in paragraph (c)(2)(vi)(A)(*3*) of this section.

(*2*) For all Government Securities and all Synthetic Bond Positions, the Specific Market Risk Charge shall be zero. For all other securities or instruments covered by paragraph (c)(2)(vi)(A) of this section, the broker or dealer shall compute a Specific Market Risk Charge equal to the market value of the net position in each security multiplied by the applicable percentage specified below:

Residual maturity of product	Percentage fixed rate	Percentage adjustable rate
Less than 6 months ..	0.25	0.75
6 months but less than 2 years	1.00	1.50
2 years or more	1.60	2.10

(*3*) The General Market Risk Charge shall be equal to the aggregate of the Sub-Zone Charge, the Zone Charge, the Between Zone Charge, and the Residual Charge.

(*i*) To determine its General Market Risk Charge for securities covered by paragraph (c)(2)(vi)(A) of this section, a broker or dealer shall place the market value of each security in its appropriate sub-zone in accordance with the following:

(*A*) The market value of each security shall be placed in one of the sub-zones listed below based upon its residual maturity, except for those instruments described in paragraphs

(c)(2)(vi)(*3*)(*i*)(*B*), (c)(2)(vi)(*3*)(*i*)(*C*) and (c)(2)(vi)(*3*)(*i*)(*D*) of this section.

Residual maturity	Sub-zone	Sub-zone percentage
Zone 1:		
1 month or less	(i)	0
More than 1 month but not more than 3 months.	(ii)	0.20
More than 3 months but not more than 6 months.	(iii)	0.40
More than 6 months but not more than 1 year.	(iv)	0.70
Zone 2:		
More than 1 year but not more than 2 years.	(v)	1.25
More than 2 years but not more than 3 years.	(vi)	1.75
More than 3 years but not more than 4 years.	(vii)	2.25
Zone 3:		
More than 4 years but not more than 5 years.	(viii)	2.75
More than 5 years but not more than 7 years.	(ix)	3.25
More than 7 years but not more than 10 years.	(x)	3.75
Zone 4:		
More than 10 years but not more than 15 years.	(xi)	4.50
More than 15 years but not more than 20 years.	(xii)	5.25
More than 20 years	(xiii)	6.00
Zone 5:		
Deep Discount Bonds with more than 15 years but not more than 20 years.	(xiv)	9.00
Deep discount bonds with more than 20 years.	(xv)	12.00

(*B*) An Adjustable Rate Security shall be deemed to have a residual maturity equal to the remaining time to the effectiveness of its Next Interest Rate Reset Date.

(*C*) The market value of a Pass-Through Mortgage-Backed Security shall be placed into one of the sub-zones in accordance with the following table based on its market value relative to its par value:

PASS-THROUGH MORTGAGE-BACKED SECURITIES

Sub-zone	30-year pass-throughs	15-year pass-throughs	5- and 7-year balloons
(iv)	>108%	NA	NA.
(vi)	>105% but less than or = 108%	>103%	>102%.
(vii)	>102% but less than or = 105%	>100% but less than or = 103%	>94% but less than or = 102%.
(viii)	>98% but less than or = 102%	100% or less	94% or less.
(x)	98% or less	NA	NA.

(*D*) The market value of a Deep Discount Bond with a residual maturity of no more than six years shall be placed in one of the sub-zones in accordance with its residual maturity. The market value of a Deep Discount Bond with a residual maturity of more than six years shall be placed in one of the sub-zones based upon its residual maturity as follows:

Residual maturity	Sub-zone
More than 6 years but not more than 7½ years.	(x)
More than 7½ years but not more than 9 years.	(xi)
More than 9 years but not more than 12 years.	(xii)
More than 12 years but not more than 15 years.	(xiii)
More than 15 years but not more than 20 years.	(xiv)
More than 20 years	(xv)

(*E*) A broker or dealer that has entered into a futures or forward contract for the purchase or sale of a security covered by paragraph (c)(2)(vi)(A) of this section shall include in one of the sub-zones specified in paragraphs (c)(2)(vi)(A)(*2*) and (*3*) of this section the market value of a long or short position in any security that is specified as deliverable under the terms of the contract, in accordance with the residual maturity of the security. The market value of any positions included pursuant to this paragraph shall be equivalent to the market value of the corresponding future or forward contract. The provisions of appendix B (§ 240.15c3–1b) will in any event apply to the positions in futures contracts.

(*F*) A broker or dealer that has entered into a Swap Agreement shall include it in one or more of the sub-zones as follows. If the broker or dealer has entered into a Swap Agreement that obligates it to pay or receive scheduled interest cash flows at an adjustable rate of interest, the broker or dealer shall include in one of the sub-zones the market value of a short or long position, respectively, in a Synthetic Bond reflecting a principal amount equal to the notional amount of the Swap Agreement with residual maturity equal to the period until the effective date of the Next Interest Rate Reset Date. If a broker or dealer has entered into a Swap Agreement that obligates it to pay or receive scheduled interest cash flows at a fixed interest rate, it shall include in one of the sub-zones the market value of a short or long position, respectively, in a Synthetic Bond reflecting a principal amount equal to the notional amount of the Swap Agreement with residual maturity equal to the period until the maturity of the Swap Agreement.

(*G*) A broker or dealer that has entered into a repurchase or reverse repurchase agreement involving a security covered by paragraph (c)(2)(vi)(A) of this section, shall include in one of the sub-zones the market value of a short or long position in a Synthetic Bond with a principal amount equal to that of the funds received or provided, respectively, and a maturity equal to that of the residual maturity of the contract or equal to the period until the effective date of the Next Interest Rate Reset Date, whichever is less.

(*H*) A separate General Market Risk Charge calculation must be made for positions denominated in each different currency.

(*ii*) *Sub-Zone Charge.* The Sub-Zone Charge shall equal the sum of the charge for offsetting Swap Agreements plus the charge for other securities covered by paragraph (c)(2)(vi)(A) of this section for each sub-zone calculated as follows:

(*A*) The charge for offsetting Swap Agreements shall equal the lesser of the

aggregate long or short swap positions in each sub-zone multiplied by the applicable sub-zone percentage set forth in paragraph (c)(2)(vi)(A)(*3*)(*i*)(*A*) of this section (the ''Sub-Zone Percentage'') multiplied by 1%. The net of all the long and short swap positions in each sub-zone (*i.e.*, non-offsetting swap positions) shall be added to the long or short position in other securities covered by paragraph (c)(2)(vi)(A) of this section in that sub-zone for the purpose of calculating the remaining charges in this paragraph.

(*B*) The charge for securities other than offsetting Swap Agreements in each sub-zone covered by paragraph (c)(2)(vi)(A) of this section shall equal the lesser of the aggregate long or short positions in each sub-zone (which shall include any non-offsetting swap positions carried forward as calculated in accordance with paragraph (c)(2)(vi)(A)(*3*)(*ii*)(*A*) of this section) multiplied by the applicable Sub-Zone Percentage, multiplied by 5%.

(*C*) The Long or Short Sub-Zone Carry-Forward Amount for a sub-zone shall equal the net of all sub-zone long or short securities positions in that sub-zone multiplied by the applicable Sub-Zone Percentage.

(*iii*) *Zone Charge.* The Zone Charge shall equal the aggregate of the charge for each zone calculated as follows:

(*A*) The Long and Short Zone Positions for each zone shall equal, respectively, the aggregate Long Sub-Zone Carry-Forward Amounts and aggregate Short Sub-Zone Carry-Forward Amounts in each zone.

(*B*) The Zone Charge for each zone shall equal the lesser of the aggregate Long Zone Positions or aggregate Short Zone Positions for each zone multiplied by the applicable percentage set forth below:

Zone 1—25%.
Zone 2—30%.
Zone 3—35%.
Zone 4—40%.
Zone 5—50%.

(*C*) The net of the Long Zone Positions and Short Zone Positions in each Zone shall be the Long or Short Zone Carry-Forward Amount for that zone.

(*iv*) *Between Zone Charge.* The Between Zone Charge shall equal the aggregate of the charges calculated as follows:

(*A*) The Between Zone Charge shall equal the lesser of the Long or Short Zone Carry-Forward Amounts between the zones described below multiplied by the applicable percentages:

Zones	Percentage
Between Zone 1 and Zone 2	50
Between Zone 2 and Zone 3	60
Between Zone 3 and Zone 4	70
Between Zone 4 and Zone 5	80
Between Zone 1 and Zone 3	85
Between Zone 2 and Zone 4	90

That portion of a Long or Short Zone Carry-Forward Amount used to offset a Long or Short Zone Carry-Forward Amount may not be used again to offset another Long or Short Zone Carry-Forward Amount.

(*B*) The Long and Short Zone Carry-Forward Amounts not offset pursuant to (c)(2)(vi)(*3*)(*iv*)(*A*) shall be the Long or Short Between Zone Carry-Forward Amounts.

(*v*) *Residual Charge.* The sum of the values of the Long and Short Between Zone Carry-Forward Amounts shall be the Residual Charge.

(*4*) *Definitions.* For the purposes of paragraph (c)(2)(vi)(A) of this section:

(*i*) *Government Securities* means all securities issued or guaranteed as to principal and interest by the United States or any agency thereof.

(*ii*) *Adjustable Rate Security* means a security covered by paragraph (c)(2)(vi)(A) of this section that has an interest rate that resets based upon an index that reflects current U.S. Treasury interest rates corresponding to the interest rate reset period of the covered security.

(*iii*) *Pass-Through Mortgage-Backed Security* means any security issued under the sponsorship of the United States or any agency thereof that represents a pro rata interest or participation in the principal and interest cash flows generated by a pool of mortgage loans of which at least 95% of the aggregate principal is composed of fixed rate residential mortgage loans on one-to-four family homes, including five and seven year mortgage loans with balloon payments at maturity. Multifamily, adjustable rate, commercial, and mobile home mortgage loans shall not be considered Pass-Through Mortgage-Backed Securities.

(*iv*) *Deep Discount Bonds* mean all securities covered by paragraph (c)(2)(vi)(A) of this section, other than Pass-Through Mortgage-Backed Securities, that either do not pay interest or are priced at 50% or less of their par value.

(*v*) *Next Interest Rate Reset Date* means, as to any Adjustable Rate Instrument, the maturity date of such instrument or, if earlier, the next date as of which the interest rate on the instrument is subject to being either increased or decreased, as applicable, by an amount that is at least 0.5% greater or lesser than the current interest rate on the instrument.

(*vi*) *Synthetic Bond Positions* mean hypothetical bond positions that are included in the maturity bands specified in paragraph (c)(2)(vi)(A)(*3*) of this section by virtue of paragraphs (c)(2)(vi)(A)(*3*)(*i*) (*F*), and (*G*) of this section.

(*vii*) *Swap Agreement* means a contractual agreement under which a broker-dealer is obligated to pay or entitled to receive from a counterparty cash flows equal to interest at a predetermined fixed rate, or at a floating rate, on a notional principal for the term of the Swap Agreement. The interest rate used to calculate parties' obligations under the Swap Agreement must be based on an index that approximates interest rates for instruments included within the scope of paragraph (c)(2)(vi)(A) of this section, and the parties' payment obligations cannot be a multiple of that interest rate index.

(*viii*) *Money Market Debt Instruments* mean, in the case of any short term promissory note or evidence of indebtedness which has a fixed rate of interest or is sold at a discount, and which has a maturity date at date of issuance not exceeding nine months exclusive of days of grace, or any renewal thereof, the maturity of which is likewise limited and is rated in one of the three highest categories by at least two of the nationally recognized statistical rating organizations, or in the case of any negotiable certificates of deposit or bankers acceptances or similar type of instrument issued or guaranteed by any bank as defined in Section 3(a)(6) of the Act (15 U.S.C. 78c(a)(6)).

* * * * *

(D) * * *

Certain Municipal Bond Trusts and Liquid Asset Funds

(*3*) In the case of redeemable securities of an investment company registered under the Investment Company Act of 1940, which assets are in the form of cash or securities or money market instruments that are described in paragraphs (c)(2)(vi)(A) through (C) of this section, the charge shall be 9% of the market value of the long or short position.

(E) [Reserved]

(F) [Reserved]

Convertible Debt Securities

(G) In the case of a debt security not in default that has a fixed rate of interest and a fixed maturity date and that is convertible into an equity security, the

charges shall be as follows: If the market value is 100 percent or more of the principal amount, the charge shall be determined as specified in paragraph (c)(2)(vi)(J) of this section; if the market value is less than the principal amount, the charges shall be determined as specified in paragraphs (c)(2)(vi)(A)(*2*) and (*3*) of this section based on its remaining maturity, provided that the security is rated as required by paragraph (c)(2)(vi)(A) of this section.

* * * * *

Dated: December 17, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Appendix 1—Sample Calculation of Haircuts on Fixed Income Products

This appendix demonstrates how to calculate the Specific Market Risk Charge and the General Market Risk Charge on Fixed Income Products under the Proposed Amendments. The example is not intended to replicate an actual broker-dealer portfolio or to be used as a basis to compare haircuts under the Proposed Amendments to those under the current rule, but rather the example is intended to show how the Proposed Amendments operate. The first step in calculating haircuts under the Proposed Amendments is to calculate the Specific Market Risk Charge. Next, calculate the General Market Risk Charge. To calculate the General Market Risk Charge, each of the Fixed Income Products must be categorized by assigning the position in each instrument into one of the 15 sub-zones, reflecting separately the long and short positions.

The following table illustrates how an example portfolio is categorized under the Proposed Amendments. ^Repurchase and Reverse Repurchase Agreements are categorized based upon the agreements remaining maturity. *Treasury securities are categorized into the appropriate sub-zones based upon remaining maturity. **Fixed rate interest rate swaps are categorized based upon their residual maturity. ***Two of the Nonconvertible Debt securities have variable interest rates that reset every two and three years, respectively. These securities are placed into maturity sub-zones based upon their length of time to the Next Interest Reset Date. ~Futures contracts included in the portfolio are categorized based upon the remaining maturity of the Treasury security deliverable under the contract and not the length of the contract. ‘‘The Pass-Through Mortgage security is placed into the appropriate sub-zone based upon its market value relative to par which is greater than 98% but less than or equal to 102%.

Security	Value	Type of holding	Remaining maturity	Interest reset date	Zone	Sub-zone
Residual Maturity Categorization (Section 15c3–1(c)(2)(vi)(A)(3)(i)						
Repurchase Agreement^	$2,000,000	Short	30 Days	Fixed	1	i
Reverse Repurchase Agreement^	1,000,000	Long	30 Days	Fixed	1	i
Treasury*	1,000,000	Short	6 Months	Fixed	1	iii
Treasury*	1,500,000	Long	6 Months	Fixed	1	iii
Treasury*	500,000	Long	1 Year	Fixed	1	iv
Treasury*	1,000,000	Short	1 Year	Fixed	1	iv
Interest Rate Swap**	1,000,000	Long	8 Months	Fixed	1	iv
Interest Rate Swap**	1,200,000	Short	11 Months	Fixed	1	iv
Treasury*	2,000,000	Long	2 Years	Fixed	2	v
Treasury*	1,500,000	Long	2 Years	Fixed	2	v
Treasury*	1,000,000	Short	2 Years	Fixed	2	v
Treasury*	12,000,000	Short	2 Years	Fixed	2	v
Nonconvertible Debt***	2,500,000	Short	5 Years	Variable (2 Years)	2	v
Treasury*	2,000,000	Long	3 Years	Fixed	2	vi
Treasury*	2,500,000	Short	3 Years	Fixed	2	vi
Nonconvertible Debt***	1,000,000	Long	10 Years	Variable (3 Years)	2	vi
Treasury*	1,000,000	Long	5 Years	Fixed	3	viii
Future on 5-Year Treasury~	2,000,000	Short	180 Days	Fixed	3	viii
Treasury*	2,000,000	Short	10 Years	Fixed	3	x
Pass-Through Mortgage″	2,000,000	Short	29 Years	Fixed	3	x
Nonconvertible Debt***	1,000,000	Long	10 Years	Fixed	3	x
Future on 10-Year Treasury~	7,000,000	Long	90 Days	Fixed	3	x
Treasury*	3,000,000	Long	30 Years	Fixed	4	xiii
Treasury*	2,500,000	Short	30 Years	Fixed	4	xiii
Total	54,200,000					

Note: Appendix 1 to the preamble does not appear in the Code of Federal Regulation.

To calculate the Specific Market Risk Charge, a broker-dealer first categorizes those instruments subject to the charge into maturity categories based upon residual maturity. Note that for calculating the Specific Market Risk Charge, Adjustable Rate Securities are categorized by remaining maturity, not the time until the Next Interest Reset Date. The following demonstrates how the Specific Market Risk Charge is calculated for the sample portfolio.

Line No.	Security	Fixed or variable	Remaining maturity	Value	Specific market risk calculation	Specific market risk charge
Specific Market Risk Charge (Section 15c3–1(c)(2)(vi)(A)(2))						
1	Nonconvertible Debt	Variable	5 Years	$2,500,000	× 2.1%=	$52,500
2	Nonconvertible Debt	Variable	10 Years	1,000,000	× 2.1%=	21,000
3	Nonconvertible Debt	Fixed	10 Years	1,000,000	× 1.6%=	16,000

Line No.	Security	Fixed or variable	Remaining maturity	Value	Specific market risk calculation	Specific market risk charge
	Total Specific Market Risk Charge.	.....	.....	.....	.....	89,500

To calculate the haircut for its Fixed Income Products, a firm would first take a haircut for offsetting positions within the same sub-zone. Any remaining unhedged positions could then be used to offset other residual amounts from other sub-zones within the same zone, albeit with a larger haircut. A broker-dealer would then offset unhedged amounts between zones. The largest haircut under the Proposed Amendments would be imposed on residual positions that could not be offset under this procedure. The following demonstrates how the Sub-Zone Charges are calculated under the Proposed Amendments. This example does not show the application of Appendix B of Rule 15c3–1 as it applies to Futures and Forward contracts.

Line No.	Securities	Sub-zone	Long positions	Short positions	Charge calculation	Sub-zone charge
	Sub-Zone Charge (Section 15c3–1(c)(2)(vi)(A)(3)(ii))					
1	Repurchase Agreement	i		$2,000,000		
2	Reverse Repurchase Agreement	i	$1,000,000		X 0% X 5%=	$0
3	Net Position	i		1,000,000		
4	Sub-Zone Carry Forward (Line 3 X Sub-Zone Percentage of 0%).	i		0		
5	Treasury	iii		1,000,000	X .4% X 5%=	200
6	Treasury	iii	1,500,000			
7	Net Position	iii	500,000			
8	Sub-one Carry Forward (Line 7 X Sub-Zone Percentage of .4%).	iii	2,000			
9	Interest Rate Swap	iv	1,000,000		X .7% X 1%=	70
10	Interest Rate Swap	iv		1,200,000		
11	Net Position	iv		200,000	.	
12	Treasury	iv	500,000		X .7% X 5%=.	
13	Treasury	iv		1,000,000	X .7% X 5%=	175
14	Net Swap Position From Line 11	iv		200,000		
15	Net Position	iv		700,000		
16	Sub-Zone Carry Forward (Line 15 X Sub-Zone Percentage of .7%).	iv		4,900		
17	Treasury	v	2,000,000			
18	Treasury	v	1,500,000		(2,000,000 + $1,500,000) X 1.25% X 5%=.	2,188
19	Treasury	v		1,000,00		
20	Treasury	v		12,000,000		
21	Nonconvertible Debt	v		2,500,000		
22	Net Position	v		12,000,000		
23	Sub-Zone Carry Forward (Line 22 X Sub-Zone Percentage of 1.25%).	v		150,000		
24	Treasury	vi	2,000,000			
25	Nonconvertible Debt	vi	1,000,000			
26	Treasury	vi		2,500,000	X 1.75% X 5%=	2,188
27	Net Position	vi	500,000			
28	Sub-Zone Carry Forward (Line 27 X Sub-Zone Percentage of 1.75%).	vi	8,750			
29	Treasury	viii	1,000,000		X 2.75% X 5%=	1,375
30	Future on 5-Year Treasury	viii		2,000,000		
31	Net Position	viii		1,000,000		
32	Sub-Zone Carry Forward (Line 31 X Sub-Zone Percentage of 2.75%).	viii		27,500		
33	Treasury	x		2,000,000		
34	Pass-Through Mortgage	x		2,000,000	($2,000,000 + $2,000,000) X 3.75% X 5%=.	7,500

Line No.	Securities	Sub-zone	Long positions	Short positions	Charge calculation	Sub-zone charge
35	Nonconvertible Debt	x	1,000,000			
36	Future on 10-Year Treasury	x	7,000,000			
37	Net Position	x	4,000,000			
38	Sub-Zone Carry Forward (Line 37 X Sub-Zone Percentage of 3.75%).	x	150,000			
39	Treasury	xiii	3,000,000			
40	Treasury	xiii		2,500,000	X 6% X 5%=	7,500
41	Net Position	xiii	500,000			
42	Sub-Zone Carry Forward (Line 41 X Sub-Zone Percentage of 6%).	xiii	30,000			
Total Sub-Zone Charge.						21,195

As discussed above, the Sub-Zone Carry Forward Amounts (i.e., the remaining unhedged positions after calculation of the Sub-Zone Charges) are then used to offset other Sub-Zone Carry Forward Amounts from the other sub-zones within the same zone. The following demonstrates how the Zone Charges are calculated for the example portfolio under the Proposed Amendments.

Line No.	Zones	Long positions	Short positions	Zone charge calculation	Zone charge
	Zone Charge (Section 15c3–1(c)(2)(vi)(A)(3)(iii))				
	Zone 1				
1	Carry Forward From Sub-Zone iii	$2,000			
2	Carry Forward From Sub-Zone iv		$4,900	.	
3	Total Zone Positions	2,000	4,900	$2,000×25%=	$500
4	Less Offsetting Position		2,000	.	
5	Zone Carry Forward Amount		2,900	.	
	Zone 2				
6	Carry Forward From Sub-Zone v		150,000		
7	Carry Forward From Sub-Zone vi	8,750			
8	Total Zone Positions	8,750	150,000	8,750×30%=	2,625
9	Less Offsetting Position		8,750		
10	Zone Carry Forward Amount		141,250	.	
	Zone 3				
11	Carry Forward From Sub-Zone viii		27,500		
12	Carry Forward From Sub-Zone x	150,000			
13	Total Zone Positions	150,000	27,500	27,500×35%=	9,625
14	Less Offsetting Position	27,500			
15	Zone Carry Forward Amount	122,500			
16	Zone 4				
17	Carry Forward From Sub-Zone xiii	30,000			
18	Total Zone Positions	30,000		$0×40%	0
19	Less Offsetting Position	0			
20	Zone Carry Forward Amount	30,000			
	Total Zone Charge				12,750

As discussed above, the Zone Carry Forward Amounts (i.e., the remaining unhedged positions after calculation of the Zone Charges) are then used to offset Zone Carry Forward Amounts. The following demonstrates how the Between Zone Charges are calculated for the example portfolio under the Proposed Amendments. In this example, the Between Zone Charges are calculated between Zone 1 and Zone 2; Zone 2 and Zone 3; and Zone 2 and Zone 4.

Line No.	Between zone	Long positions	Short positions	Between zone calculation	Between zone charge
	Between Zone Charge (Section 15c13–1(c)(2)(vi)(A)(3)(iv))				
1	Carry Forward From Zone 1		$2,900		

Line No.	Between zone	Long positions	Short positions	Between zone calculation	Between zone charge
2	Carry Forward From Zone 2		141,250	.	
3	Total Zone Positions		144,150	$0×50%=	$0
4	Less Offsetting Zone Positions		0		
5	Between Zone 2 Carry Forward Amount		141,250		
6	Zone 1 Residual Amount		2,900		
Note: The Zone 1 Carry Forward Amount becomes a Between Zone Carry Forward Amount because it does not offset with Zone 2 as they are both short positions. The Between Zone 1 Carry Forward Amount is not offset against Zone 3 because the Zone 3 Carry Forward Amount is eliminated through its offset with Zone 2 as calculated below. Consequently, the Between Zone 1 Carry Forward Amount becomes a Residual Charge.					
7	Between Zone 2 Carry Forward Amount		141,250		
8	Carry Forward From Zone 3	$122,500			
9	Total Zone Positions	122,500	141,250	$122,500×60%=	73,500
10	Less Offsetting Zone Positions		122,500		
11	Between Zone 2 Carry Forward Amount		18,750		
12	Between Zone 2 Carry Forward		18,750		
13	Between Zone 4 Carry Forward	30,000			
14	Total Between Zone Positions	30,000	18,750	18,750×90%=	16,875
15	Less Offsetting	18,750			
16	Zone 4 Residual Amount	11,250			
Note: The Zone 4 Carry Forward Amount became a Between Zone Carry Forward Amount when the Zone 3 Carry Forward Amount was eliminated. The Between Zone 4 Carry Forward Amount is partially offset by the Between Zone 2 Carry Forward Amount. Because there are no other Between Zone Carry Forward Amounts to offset against the Between Zone 4 Carry Forward Amount, it becomes a Residual Charge.					
Total Between Zone Charge.					90,375

Risk charge	Applicable rule section	Haircut
Total Haircut		
Specific Market Charge	15c3–1(c)(2)(vi)(A)(2)	$89,500
Sub-Zone Charge	15c3–1(c)(2)(vi)(A)(3)(ii)	21,195
Zone Charge	15c3–1(c)(2)(vi)(A)(3)(iii)	12,750
Between Zone Charge	15c3–1(c)(2)(vi)(A)(3)(iv)	90,375
Zone 1 Residual Charge	15c3–1(c)(2)(vi)(A)(3)(v)	2,900
Zone 4 Residual Charge	15c3–1(c)(2)(vi)(A)(3)(v)	11,250
Total Haircut		227,970
Total Value of Portfolio		54,200,000

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–39456; File No. S7–32–97]

RIN 3235–AH29

Net Capital Rule

AGENCY: Securities and Exchange Commission.

ACTION: Concept release; request for comments.

SUMMARY: The Securities and Exchange Commission is continuing its study of its approach to determining net capital requirements for broker-dealers. As part of its study, the Commission is considering the extent to which statistical models should be used in setting the capital requirements for a broker-dealer's proprietary positions. Accordingly, the Commission is posing a number of questions on this subject as well as soliciting views on other possible alternatives for establishing net capital requirements.

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

ADDRESSES: Interested persons should submit three copies of their written data, views, and opinions to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. Comment letters should refer to File No. S7–32–97; this file number should be included on the subject line if E-mail is used. All submissions will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, at 202/942–0132; Peter R. Geraghty, Assistant Director, at 202/942–0177; Thomas K. McGowan, Special Counsel, at 202/942–4886; Marc J. Hertzberg, Attorney, at 202/942–0146; or Gary Gregson, Statistician, at 202/942–4156, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 2–2, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

As part of a comprehensive review of the net capital rule, Rule 15c3–1 (17 CFR 240.15c3–1) (the ''net capital rule'' or the ''Rule''), the Securities and Exchange Commission (''Commission'') is publishing this release to solicit comment on how the net capital rule could be modified to incorporate modern risk management techniques as to a broker-dealer's proprietary positions and to reflect the continuing evolution of the securities markets. More specifically, the Commission seeks comment on how the existing haircut structure could be modified and whether the net capital rule should be amended to allow firms to use statistical models to calculate net capital requirements.

A. The Current Net Capital Rule

The Commission adopted the net capital rule in substantially its current form in 1975. The Rule requires every broker-dealer to maintain specified minimum levels of liquid assets, or net capital. The Rule requires broker-dealers to maintain sufficient liquid assets in order to enable those firms that fall below the minimum net capital requirements to liquidate in an orderly fashion. The Rule is designed to protect the customers of a broker-dealer from losses upon the broker-dealer's failure. The Rule requires different minimum levels of capital based upon the nature of the firm's business and whether a broker-dealer handles customer funds or securities.

In calculating the capital requirement, the Rule requires a broker-dealer to deduct from its net worth certain percentages, known as haircuts, of the value of the securities and commodities positions in the firm's portfolio. The applicable percentage haircut is designed to provide protection from the market risk, credit risk, and other risks inherent in particular positions. Discounting the value of a broker-dealer's proprietary positions provides a capital cushion in case the portfolio value of the broker-dealer's positions decline.

The Rule requires a broker-dealer to compute its haircuts by multiplying the market value of its securities positions by prescribed percentages. For example, a broker-dealer's haircut for equity securities is equal to 15 percent of the market value of the greater of the long or short equity position plus 15 percent of the market value of the lesser position, but only to the extent this position exceeds 25 percent of the greater position.[1] In contrast to the uniform haircut for equity securities, the haircuts for several types of interest rate sensitive securities, such as government securities, are directly related to the time remaining until the particular security matures. The Rule uses a sliding scale of haircut percentages with these securities because changes in interest rates will usually have a greater impact on the price of securities with longer remaining maturities compared to those securities with shorter remaining maturities. For example, there is no haircut on government securities with less than three months remaining maturity, but there is a six percent haircut on government securities with 25 years or more remaining maturity.

The Commission believes the Rule has worked well over the years. The Commission and the self-regulatory organizations (''SROs'') have generally been able to identify at early stages broker-dealers that are experiencing financial problems and to supervise self-liquidations of failing securities firms. This early regulatory intervention has helped to avoid customer losses and the need for formal proceedings under the Securities Investor Protection Act of 1970.

B. Prior Relevant Actions

Since 1993, the Commission has undertaken a number of initiatives to better understand how securities firms manage market and credit risk and to evaluate whether the firms' risk management techniques could be incorporated into the net capital rule. This section reviews four of the Commission's initiatives as well as recent rules addressing capital requirements for banks adopted by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (collectively, the ''U.S. Banking Agencies'').

1. 1993 Concept Release

In May 1993, the Commission began a comprehensive review of the Rule by issuing a concept release soliciting comment on alternative methods for computing haircuts on derivative financial instruments (''Concept Release'').[2] Although the Concept Release's focus was on derivative instruments, the Commission intended to commence a dialogue with the securities industry regarding how the Rule could better reflect the market and credit risks inherent in a broker-dealer's proprietary securities portfolio. At that time, the Commission envisioned a multi-step revision of the net capital rule that would substantially change how broker-dealers calculate the market and credit risk haircuts arising from their proprietary positions.

2. Derivatives Policy Group

The Derivatives Policy Group (''DPG''), consisting of the six U.S. firms[3] most active in the over-the-counter (''OTC'') derivatives market, was formed at the Commission's request to address the public policy issues arising from the activities of unregistered affiliates of registered broker-dealers and registered futures commission merchants. In March 1995, after discussions with the Commission, the DPG published its Framework for Voluntary Oversight (''Framework'') under which the members of the DPG agreed to report voluntarily to the Commission on their activities in the OTC derivatives market.[4] The Framework provides for the use of proprietary statistical models to measure capital at risk due to the firms' OTC derivatives activities; however, the Framework was not intended to be used as a method for calculating minimum capital standards for the DPG firms.

For purposes of using models to measure capital at risk, the DPG defines risk of loss, or ''capital at risk,'' to be ''the maximum loss expected to be exceeded with a probability of one percent over a two-week holding

[1] For example, in the case where a firm has a long position of $100,000 in equity securities and a short position of $50,000 in equity securities, that firm's haircut for equity securities would be:

1. Long Position: $100,000 x 15% = $15,000
2. Short Position: $50,000—$25,000 (25% of long position) x 15% = $3,750
3. Total haircut for equity securities: $15,000 + $3,750 = $18,750.

[2] Securities Exchange Act Rel. No. 32256 (May 4, 1993), 58 FR 27486 (May 10, 1993).

[3] The six firms in the DPG are CS First Boston, Goldman Sachs, Morgan Stanley, Merrill Lynch, Salomon Brothers, and Lehman Brothers.

[4] Framework For Voluntary Oversight, A Framework For Voluntary Oversight Of The OTC Derivatives Activities Of Securities Firm Affiliates To Promote Confidence And Stability In Financial Markets, Derivatives Policy Group (March 1995).

period.'' [5] The Framework covers several products, including: interest rate, currency, equity, and commodity swaps; OTC options (including caps, floors, and collars); and currency forwards (*i.e.*, currency transactions of more than a two-day duration, except that firms may elect to include only currency transactions of 14 days or more of duration). The Framework provides that each firm's model must capture all material sources of market risk that might impact the value of the firm's positions, including nine specific material sources of risk, or core risk factors, based on interest rate shocks, changes in equity values, and changes in exchange rates.[6]

Each DPG firm agreed to calculate capital at risk under two scenarios. Under the first scenario, each firm would independently determine the size of the shocks used to calculate its capital at risk. Under the second scenario, each firm would calculate its capital at risk due to certain Commission specified, hypothetical large shocks to the core risk factors. The purposes of preparing a second set of capital at risk data are to assist the Commission in comparing volatility among the firms' portfolios and to evaluate the usefulness of the firms' models in measuring market risk during times of unusual market stress.

The Framework does not specify minimum correlations between securities that are to be used in the models. The Framework states that there are many generally accepted methods for estimating historical or market-implied volatilities and correlations and, instead of utilizing predetermined correlation factors, the Framework provides that hedging would be permitted where contracts and instruments within the category exhibit an ''appropriately high degree of positive price correlation.'' Thus, the degree to which firms would recognize positions as hedges was left to the individual discretion of each firm. The Framework notes, however, that estimates of volatility and correlation may not be accurate during times of market stress.

The Framework also sets forth common audit and verification procedures of the technical and performance characteristics of the models. Under the Framework, the firms are responsible for making all computations necessary for purposes of assessing risk in relation to capital on a regular basis and to provide such computations on a current basis upon request. Under the Framework, the inventory pricing and modelling procedures of firms are to be reviewed at least annually by independent auditors or consultants. The independent auditors or consultants provide reports summarizing the results of their reviews, and the firms provide the audit reports to the Commission.

Under the Framework, the DPG firms have enhanced reporting requirements regarding their exposure to credit risk. The information reported to the Commission falls primarily into two principal categories: credit concentration and portfolio credit quality. Credit concentration in the portfolio is reported by separately identifying the top 20 net exposures on a counterparty-by-counterparty basis. The credit quality of the portfolio is reported by aggregating for each counterparty the gross and net replacement value and net exposure of the firm. Credit information also is categorized by credit rating, industry, and geographic location.

The Framework established risk management guidelines that provide a comprehensive framework for the DPG firms to implement their business judgments as to the appropriate scope and level of their OTC derivatives activities. The Framework provides that each firm's board of directors should adopt written guidelines addressing the scope of permitted activities, the acceptable levels of credit and market risk, and the structure and independence of the risk monitoring and risk management processes and related organizational checks and balances from the firm's trading operations. Senior management should also implement independent risk measuring and risk monitoring processes to manage risk within the guidelines established by the board of directors.

3. Theoretical Options Pricing Models

In February 1997, the Commission completed an important step in its review of the net capital rule by amending the Rule to allow broker-dealers to use theoretical option pricing models to determine capital charges for listed equity, index, and currency options, and related positions that hedge these options.[7] The amendment permits broker-dealers to use a model (other than a proprietary model) maintained and operated by a third-party source (''Third-Party Source'') and approved by a designated examining authority (''DEA'').[8] The Third-Party Source is required to collect certain information on a daily basis concerning different options series.[9] Using this information, the Third-Party Source measures the implied volatility for each option series and inputs to the model the resulting implied volatility for each option series. For each option series, the model calculates theoretical prices at 10 equidistant valuation points using specified increases and decreases in the underlying instrument.

After the model calculates the theoretical gain or loss valuations, the Third-Party Source provides the valuations to broker-dealers. Broker-dealers download this information into a spreadsheet from which the broker-dealer calculates the profit or loss for each of its proprietary and market-maker options positions. The greatest loss at any one valuation point is the haircut. This amendment to the Rule was a milestone because it was the first time the Commission allowed modelling techniques for regulatory capital purposes.

4. OTC Derivatives Dealers

Simultaneously with this release, the Commission is proposing a new limited regulatory regime for OTC derivatives dealers.[10] Under this regime, OTC derivatives dealers could register with the Commission and be subject to specialized net capital requirements. The Commission is considering requiring OTC derivatives dealers registered under this framework to maintain tentative net capital of not less than $100 million and net capital of not less than $20 million. As part of this proposal, the Commission is contemplating giving OTC derivatives dealers the option of taking either the existing securities haircuts or haircuts based on statistical models. OTC derivatives dealers electing to use

[5] *Id.* at 28.

[6] Specifically, the core risk factors include: (1) Parallel yield curve shifts, (2) changes in steepness of yield curves, (3) parallel yield curve shifts combined with changes in steepness of yield curves, (4) changes in yield volatilities, (5) changes in the value of equity indices, (6) changes in equity index volatilities, (7) changes in the value of key currencies (relative to the U.S. dollar), (8) changes in foreign exchange rate volatilities, and (9) changes in swap spreads in at least the G–7 countries plus Switzerland.

[7] Securities Exchange Act Rel. No. 38248 (February 6, 1997), 62 FR 6474 (February 12, 1997).

[8] Currently, the model maintained and operated by The Options Clearing Corporation (''OCC'') is the only approved model. OCC's model has been temporarily approved until September 1, 1999.

[9] Under the rule amendment, the Third-Party Source will collect the following information: (1) the dividend streams for the underlying securities, (2) interest rates (either the current call rate or the Eurodollar rate for the maturity date which approximates the expiration date of the option), (3) days to expiration, and (4) closing underlying security and option prices from various vendors.

[10] Securities Exchange Act Rel. No. 39454 (December 17, 1997).

models would have to calculate potential losses and specific capital charges for both market and credit risk. These OTC derivatives dealers also would have to maintain models that meet certain minimum qualitative and quantitative requirements that are substantially similar to the requirements set forth in the U.S. Banking Agencies' rules.

5. U.S. Banking Agencies

In August 1996, the U.S. Banking Agencies adopted rules incorporating into their bank capital requirements risk-based capital standards for market risk that cover debt and equity positions in the trading accounts of certain banks and bank holding companies and foreign exchange and commodity positions wherever held by the institutions. The U.S. Banking Agencies' rules were designed to implement the Basle Committee on Banking Supervision's (''Basle Committee'') [11] agreement on a model based approach to cover market risk. These rules apply to any bank or bank holding company whose trading activity equals ten percent or more of its total assets, or whose trading activity equals $1 billion or more. The U.S. Banking Agencies' final rules became effective January 1, 1997 and compliance will be mandatory by January 1, 1998. Institutions that do not meet these minimum securities trading thresholds will not be subject to market risk capital requirements.

The U.S. Banking Agencies' rule amendments require affected banks or bank holding companies to adjust their risk-based capital ratio to reflect market risk by taking into account the general market risk and specific risk of debt and equity positions in their trading accounts.[12] These institutions also must take into account the general market risk associated with their foreign exchange and commodity positions, wherever located. The capital charge for market risk must be calculated by using the institution's own internal model.

[11] The Governors of the G–10 countries established the Basle Committee on Banking Supervision in 1974 to provide a forum for ongoing cooperation among member countries on banking supervisory matters.

[12] The Banking Agencies defined general market risk as changes in the market value of on-balance sheet assets and liabilities and off-balance sheet items resulting from broad market movements, such as changes in the general level of interest rates, equity prices, foreign exchange rates, and commodity prices. Specific risk is defined by the Banking Agencies as changes in the market value of individual positions due to factors other than broad market movements and includes such risks as the credit risk of an issuer.

II. Alternatives to the Current Financial Responsibility Regime

The Commission is soliciting comment on possible alternative methods for calculating credit and market risk capital requirements for broker-dealers. This release will help the Commission evaluate different ways the net capital rule could be modified to accommodate changes in the securities business since the current uniform net capital rule was adopted in 1975, with a particular emphasis on incorporating modern risk management techniques. In this regard, the Commission believes it can modernize the Rule by either amending the current haircut percentages or by allowing certain broker-dealers to use a model-based system to calculate appropriate capital charges for market risk. This section discusses each of the alternative structures and lists relevant questions.

A. Modify Current Haircut Approach

As discussed above, the Rule requires a broker-dealer to deduct from its net worth certain fixed percentages, or haircuts, of the value of its securities positions. The present prescriptive haircut methodology has several advantages. It requires an amount of capital which will be sufficient as a provision against losses, even for unusual events. It is an objective, although conservative, measurement of risk in positions that can act as a tool to compare firms against one another. Moreover, the current methodology enables examiners to determine readily whether a firm is properly calculating haircuts. The examiner can review either the entire net capital calculation or just material portions of the firm's proprietary positions.

However, there are some weaknesses associated with determining capital charges based on fixed percentage haircuts. For example, the current method of calculating net capital by deducting fixed percentages from the market value of securities can allow only limited types of hedges without becoming unreasonably complicated. Accordingly, the net capital rule recognizes only certain specified hedging activities, and the Rule does not account for historical correlations between foreign securities and U.S. securities or between equity securities and debt securities. By failing to recognize offsets from these correlations between and within asset classes, the fixed percentage haircut method may cause firms with large, diverse portfolios to reserve capital that actually overcompensates for market risk.

To eliminate weaknesses in the current haircut structure, the Commission could modernize the Rule by maintaining the current methodology but changing the haircut percentages and recognizing additional offsetting positions. For example, the proposing release issued simultaneously with this concept release proposes amendments to the Rule that would treat haircuts on certain interest rate products as being part of a single portfolio, similar to the standard approach in the Basle Committee's Capital Accord.[13] As proposed, the net capital rule would recognize hedges among government securities, investment grade nonconvertible debt securities (or corporate debt securities), pass-through mortgage backed securities, repurchase and reverse repurchase agreements, money market instruments, and futures and forward contracts on these debt instruments. As a next step, the Commission could revise the current haircut percentages and develop methodology to account for more correlations and hedges among other types of securities.

The Commission solicits comment on the following topics. It is not necessary, however, that comments be limited to the specific issues raised in this release. Commenters are encouraged to submit statements with respect to any aspect of the current net capital rule that may be useful to the Commission.

Question 1: Should the Commission retain the current haircut approach but revise the current percentages? If so, which haircut percentages should be modified? How should these percentages be modified? What should be the objective basis for modified haircut percentages? Please provide relevant data to support your response.

Question 2: Do the current haircut percentages adequately account for the market risk, credit risk, and other risks inherent in a particular position?

Question 3: Do the current haircut percentages enable firms to reserve sufficient capital for times of market stress, including one day movements and movements over a period of time? Please provide relevant data to support your response.

Question 4: How can haircut percentages be further adjusted to account for correlations between and within asset classes? Please provide relevant data to support your response.

Question 5: How can the current haircut approach be modified to improve the treatment for specific types of securities, including foreign securities, collateralized mortgage obligations (''CMOs''), and over-the-counter options on interest-rate securities? Please provide relevant data to support your response.

[13] Securities Exchange Act Rel. No. 39455 (December 17, 1997).

Question 6: Should the Commission include security-specific models, other than the option pricing models, in the Rule? If so, what forms should these models take and what types of minimum requirements should apply to the use of such models?

Question 7: If the Commission includes other security-specific models in the Rule, what types of securities should be covered by such models (*i.e.*, CMOs, over-the-counter options, or treasury securities)?

B. Model Based Approach

1. Generally

A number of broker-dealers, primarily those with large proprietary securities portfolios, have indicated to the Commission that they may be willing to incur the expenses associated with developing and using statistical models to calculate haircuts on their securities portfolios. Under a model based net capital rule, in lieu of taking fixed percentage haircuts, a broker-dealer would use either an external or internal model as the basis for a market risk charge and take a separate charge, or charges, for other types of risk, such as credit risk and liquidity risk.

The Commission could allow firms to calculate market risk capital charges according to external models for specific types of securities that are similar to the options pricing models allowed under Appendix A to the Rule. The benefit of an external model is that all firms would be utilizing the same model. However, the Commission could have difficulty finding a third party (comparable to the Options Clearing Corporation for listed options) that would have access to all the data necessary to facilitate external security-specific models for securities other than options.

With respect to internal models, the Commission would need to prescribe certain minimum quantitative and qualitative standards that a firm's model would have to meet prior to that firm using its internal model for regulatory capital purposes. Currently, several large firms use value at risk (''VAR'') models as part of their risk management system. These firms typically utilize VAR modelling to analyze, control, and report the level of market risk from their trading activities. Generally, VAR is an estimate of the maximum potential loss expected over a fixed time period at a certain probability level. For example, a firm may use a VAR model with a ten-day holding period and a 99 percentile criteria to calculate that its $100 million portfolio has a potential loss of $150,000. In other words, the firm's VAR model has forecasted that with this portfolio the firm may lose more than $150,000 during a ten-day period only once every 100 ten-day periods.

In practice, VAR models aggregate several components of price risk into a single quantitative measure of the potential for loss. In addition, VAR is based on a number of underlying mathematical assumptions and firm specific inputs. For example, VAR models typically assume normality and that future return distributions and correlations can be predicted by past returns.[14]

Given the increased use and acceptance of VAR as a risk management tool, the Commission believes that it warrants consideration as a method of computing net capital requirements for broker-dealers. However, while VAR can be used to manage market risk, broker-dealers that rely solely on VAR for risk management may not have a comprehensive risk management program. VAR models, unlike haircuts, do not typically account for those risks other than market risk, such as credit risk, liquidity risk, and operational risk. Broker-dealers that utilize VAR models should therefore use additional techniques to manage those risks.

Further, while VAR may be useful in helping broker-dealers project possible daily trading losses under ''normal'' market conditions, VAR may not help firms measure the losses that fall outside of normal conditions during times of market stress. For example, VAR models may not capture possible steep market declines because these models typically measure exposure at the first percentile (or the fifth percentile) and steep market declines are, by definition, below the first percentile. In addition, the most common VAR approaches may pose a problem for those portfolios that utilize options or other products with non-linear payoffs.[15]

The purpose of the Commission's net capital rule is to protect markets from broker-dealer failures and to enable those firms that fall below the minimum net capital requirements to liquidate in an orderly fashion without the need for a formal proceeding or financial assistance from the Securities Investor Protection Corporation. The Commission believes that market risk charges must adequately protect a broker-dealer during severe market stress, whether that stress occurs on only one day or over a period of several days, such as the drop in equity prices during the October 1987 market break or the Mexican debt crisis in 1994. Because VAR models do not typically reserve capital for severe market declines, it may be necessary to impose additional safeguards to account for possible losses or decreases in liquidity during times of stress. This may include the use of a multiplier or the use of stress tests that firms could apply to their portfolios. A multiplier could be used to account for the other risks in a firm's portfolio that are not captured by VAR models, such as operational, settlement, or legal risk. On the other hand, stress testing could provide a more complete picture of the portfolio's sensitivity to changing market conditions and a more accurate representation of capital needs than a simple multiplier.

The primary advantage of incorporating models into the net capital rule is that a firm would be able to recognize, to a greater extent, the correlations and hedges in its securities portfolio and have a comparatively smaller capital charge for market risk. Accordingly, if the Rule is amended to permit models to be used to calculate market risk in lieu of taking the haircuts currently imposed by the rule, the Commission solicits comment on how the Rule may be modified to include separate capital requirements to cover sources of risk other than market risk. Other issues associated with incorporating models into the Rule are the need for management controls necessary to ensure that the firm is collecting accurate and comprehensive information on its proprietary positions

[14] The Commission recognizes that there is a wide variety of secondary source information discussing both the positive and negative aspects of VAR. See Philippe Jorion, Value at Risk: The New Benchmark for Controlling Market Risk (1996) (explaining how to use VAR to manage market risk); JP Morgan, RiskMetrics—Technical Document (1994) (providing a detailed description of RiskMetrics, which is JP Morgan's proprietary statistical model for quantifying market risk in fixed income and equity portfolios); Tanya Styblo Beder, VAR: Seductive but Dangerous, Financial Analysts Journal, September–October 1995, at 12 (giving an extensive analysis of the different results from applying three common VAR methods to three model portfolios); Darrell Duffie and Jun Pan, An Overview of Value at Risk, The Journal of Derivatives, Spring 1997, at 7 (giving a broad overview of VAR models); Darryll Hendricks, Evaluation of Value-at-Risk Models Using Historical Data, Federal Reserve Bank of New York Economic Policy Review, April 1996, at 39 (examining twelve approaches to value-at-risk modelling on portfolios that do not include options or other securities with non-linear pricing); and Robert Litterman, Hot Spots and Hedges, Goldman Sachs Risk Management Series (1996) (giving a detailed analysis on portfolio risk management, including how to identify the primary sources of risk and how to reduce these risks).

[15] See Autoro Estrella et al., Options Positions: Risk Measurement and Capital Requirements, Federal Reserve Bank of New York Research Paper number 9415, September 1994 (evaluating different methods of measuring the market risk of options and analyzing the capital treatment of the market and credit risk of options).

and the effectiveness of those controls to monitor the risk assumed by the firm.

2. Two Tiered Approach

One way that the Commission could incorporate models into the net capital rule would be to have different net capital requirements based on certain standards (''Two Tiered Approach''). Under the Two Tiered Approach, broker-dealers meeting certain minimum threshold levels would be required to use models to determine capital compliance. For example, broker-dealers with net capital exceeding a certain amount and currently using models for in-house risk management purposes could use models to determine their market risk capital charge under prescribed circumstances. Firms with less than the prescribed level of net capital and those firms with net capital greater than the prescribed level but not using models for risk management could be required to continue to follow the current Rule's haircut methodology. These haircut percentages could either be the same as the current percentages or modified versions.

A Two Tiered Approach potentially has two primary benefits. First, the Commission could structure a Two Tiered Approach to limit the use of models to those firms that currently use sophisticated models such as VAR, thereby not requiring other firms to incur the cost of implementing such models. Second, the Commission could design a Two Tiered Approach that establishes appropriate limits on which firms can utilize models to determine capital compliance.

A potential weakness of a Two Tiered Approach is that it could inhibit competition between large and small firms because models may give large firms more flexibility in determining their net capital requirements. However, this advantage could be small if smaller firms did not have to incur the start-up and maintenance costs associated with models and the risk management infrastructure to support their use. Additionally, a Two Tiered Approach could still allow firms with simple portfolios to easily calculate the applicable haircuts on their portfolios.

3. Base Approach With Pre-Commitment Feature

Another option for incorporating models into the Rule could be to combine the current haircut methodology using fixed percentage haircuts with a model-based approach (the ''Base Approach''). The Base Approach could combine the strengths of both haircuts and models and at the same time possibly address the weaknesses of each. The Base Approach would include three primary components. First, broker-dealers could be required to maintain a certain minimum base level of net capital for each of their business activities, similar to the minimum requirements under the current rule. For example, higher capital levels could apply to broker-dealers that hold customer funds and securities as opposed to those firms that only introduce customer accounts to clearing firms. Second, broker-dealers could take a fixed percentage haircut for each security in their portfolio. This haircut would be similar to the haircut requirements under the current net capital rule; however, the size of the haircut would be lower due to the additional charge for market risk obtained from the third component.

The third component of the Base Approach could consist of a capital charge based on the firm's model and include a pre-commitment feature that could require a broker-dealer to take capital charges based on the realized performance of its models (''pre-commitment feature''). The pre-commitment feature could have two steps. First, at the start of a pre-determined time period (*i.e.*, one month or one quarter), a broker-dealer could be required to represent that its losses, as computed by its model, would be within certain parameters over the fixed time period. Second, at the conclusion of each fixed time period, the firm's minimum net capital level could increase by an amount equal to the difference between the actual portfolio gains and losses and those projected based on its model. These additional capital contributions would be required because differences between the actual results and those projected by the model could indicate that the firm's models may not be accurately assessing the risk of the firm's portfolio.

By incorporating haircuts and models into the Base Approach, the inherent strengths and weaknesses of each could potentially offset each other. Additionally, the Base Approach may be a viable capital standard for firms with diverse portfolios and those that use more sophisticated methods of risk management. The pre-commitment feature would create additional incentives for broker-dealers to manage risk effectively. On the other hand, a Base Approach may be too complicated for firms to apply. In balance, however, the Base Approach could potentially provide firms with flexibility in developing models and control systems, encourage the development of accurate forecasts, and still ensure that firms reserve sufficient amounts of net capital.

4. Comments on the Potential Use of Models

The Commission solicits comment on the following specific topics, including the appropriateness of using proprietary models generally and the recent initiatives of both the DPG and the U.S. Banking Agencies.

a. Models as a means to determine broker-dealer regulatory capital.

Question 8: Should the Commission permit the use of models to calculate regulatory capital for registered broker-dealers? If yes, please explain whether the Commission should allow firms to utilize internal models or whether the Commission should establish an external model approach similar to the treatment of options under Appendix A to the Rule.

Question 9: If the Commission permits the use of internal models, should the models conform to certain objective criteria, or should they be subjective? When could the assumptions upon which models rest be challenged? Should internal or external auditors periodically review and approve the models and their applications? If so, how much should regulators rely on auditors' application of models? Could the self-regulatory organizations adequately surveil and examine for net capital compliance utilizing models?

Question 10: Should the Commission impose limits on the types of firms that can use models? Should there be certain additional minimum criteria a firm must satisfy in order to use a proprietary model? Should firms that meet the minimum criteria for using models have the option of using an alternate standard approach (*i.e.*, not using models) to calculate regulatory capital? If so, what should that approach be?

Question 11: Is VAR an appropriate method of using models as the basis for calculating capital requirements for broker-dealers? The Commission understands there are several approaches to calculating VAR that are currently used by firms (*e.g.*, Monte Carlo, variance/covariance, and historical simulation approaches). Given the various methods, the Commission seeks comment on whether minimum criteria should be established for models used for regulatory capital purposes. If not, how can the Commission provide for the ability to compare levels of risks among firms or understand the significance of levels of risk reported by firms when determining their net capital requirements?

Question 12: The Commission believes that any approach that uses models for setting regulatory capital requirements should result in broadly consistent results for firms with similar portfolios. Can consistent results for similar portfolios be obtained without the Commission requiring firms to use a standard model? How else can consistency of capital standards among firms with similar portfolios be achieved?

Question 13: Some firms use different types of statistical models to measure risk

from different types of businesses, such as fixed income securities and foreign equities. Should the Commission permit firms to use more than one model to calculate regulatory capital? If yes, would the inefficiencies in each model get accentuated or mitigated when the results of the different models are aggregated?

Question 14: Should the Commission allow the use of models gradually (*i.e.*, first allow models for debt securities, then allow models for equity securities and other securities)?

Question 15: What will be the costs of implementing models? How do the costs of implementing models compare to the current costs of computing net capital? At what level would it be economical for firms to try to use models? How do the start-up costs of implementing models compare to the ongoing costs of managing models incurred by firms that currently use models? How does the availability (or anticipated future development) of software packages and databases impact cost estimates? Will the costs of implementing models be a barrier to firms not currently using models? Please provide relevant data to support your response.

Question 16: Will firms not currently using models be at a competitive disadvantage to those firms that currently use models? Please provide relevant data to support your response.

Question 17: If the Commission permits the use of models, what additional reporting or recordkeeping requirements would the Commission need to impose on broker-dealers using models? Should firms using models have to file additional reports with the Commission or their DEA? Should the Commission amend its books and records rules to require firms using models to maintain certain books and records that they are currently not required to maintain? How can the Commission ensure that it has access to information regarding a firm's models that is not maintained by the broker-dealer (*i.e.*, information maintained at an unregistered entity)? What measure could the Commission require to ensure broker-dealers would not be able to modify the model (or data inputs) to avoid falling out of net capital compliance? Should the Commission require models to be stored with third-parties subject to escrow arrangements?

Question 18: If the Commission permits the use of models, should firms using models be subject to modified forms of Commission and DEA inspections? Should the models themselves be subject to review and approval by the Commission or DEA?

b. Abnormal Market Conditions.

Question 19: Because the purpose of VAR is to provide an estimate of losses over a short period under normal conditions, is it possible for VAR models to ensure an adequate capital cushion during unusual market stress or structural shifts in the economy given the nature, size, and liquidity of a broker-dealer's portfolio? Given the complexity of models, could an accurate and rapid assessment be made of a firm's true financial condition? Please provide relevant data to support your response.

Question 20: Would models be more effective during times of severe market fluctuations if stress testing were required? Should the Commission specify what stress tests should be used by the firms? Please provide relevant data to support your response.

Question 21: If stress testing were required, should a firm be required to use the same parameters when conducting stress testing on each of its business units (*i.e.*, apply the same levels and stress the same movements in the relevant securities, markets, and indexes)?

Question 22: If stress testing were required, should a firm be required to test its models based on a predetermined number of volatile days of market movements (*i.e.*, models would have to be stress tested based on the 100 most volatile days of market movements during the last ten years)?

Question 23: Should the results of stress testing impact the calculation of a firm's capital requirements (*i.e.*, through the use of some type of multiplication factor)? Please provide relevant data to support your response.

Question 24: Does the use of a minimum multiplier, as endorsed in the Basle Standard and by the U.S. Banking Agencies, adequately address risks arising from severe market movements? Please provide relevant data to support your response.

Question 25: Should back-testing (*i.e.*, ex post comparisons between model results and actual performance) be required and, if so, to what extent? Should back-testing results be used to determine a multiplier for minimum capital amounts? Could back-testing results be used to raise minimum capital levels for the firms?

c. Qualitative and Quantitative Criteria for Models.

Question 26: Will setting minimum qualitative and quantitative criteria prevent a firm from adjusting its model to encompass changing market conditions, the firm's structure, or the firm's business lines?

Question 27: Two important components of models are the length of time over which market risk is to be measured and the confidence level at which market risk is measured. The definition of ''capital at risk'' as used in the DPG Framework is the maximum loss expected to be exceeded with a probability of one percent over a two-week period. Is this definition appropriate for regulatory capital purposes?

Question 28: What should be the minimum criteria for models, including pricing accuracy, correlations, netting factors, and observation periods? Please provide relevant data to support your response.

Question 29: Are the minimum standards for the use of models, the separate calculation of capital at risk due to shocks to the core risk factors, and the audit requirements used in the DPG Framework appropriate? Please provide relevant data to support your response.

Question 30: VAR models typically assume normality and that future return distributions and correlations will behave similar to the way they behaved in the past. For these reasons, the Commission needs to ensure that VAR models can withstand steep market declines. Other than by specifying minimum qualitative and quantitative criteria, how can regulators assure themselves that the proprietary models used by the firms are adequate for capital purposes?

Question 31: Should the Commission require that broker-dealers utilizing models manage these models from a risk management division that is separate from the firm's business divisions?

Question 32: Should the Commission require that broker-dealers utilizing models use the same model for both computing net capital and internal risk management purposes?

Question 33: Currently, firms utilize a wide variety of risk management techniques. Should the Commission mandate specific minimum risk management standards for firms that wish to use models?

Question 34: Should the Commission require that firms using models manage risk on either a firm-wide, legal entity, or business basis?

d. Additional Risks.

Question 35: Usually, VAR models do not handle options products well because the returns on an options portfolio are not typically normally distributed. How should the non-linear nature of options be adequately addressed? For firms with substantial options positions, is a standard approach (similar to the Commission's amendments to Appendix A of the net capital rule) more appropriate? Is the approach set forth in the Commission's recent amendments to Appendix A a viable alternative?

Question 36: Models typically measure losses by assuming that assets can be sold at current market prices. However, if a firm has a portfolio which includes illiquid assets, highly customized structured products (including, for example, some CMOs), or aged items, the Commission is particularly concerned that models may underestimate the true losses since these assets may have to be sold at a discount. Given the importance of liquidity risk, the Commission solicits specific comment with respect to how this risk should be addressed if models are permitted for regulatory purposes.

Question 37: Is it possible to include a credit risk analysis in a model based methodology? Please provide relevant data to support your response.

Question 38: As mentioned above, models may not properly account for additional risks, including credit risk, liquidity risk, operational risk, settlement risk, and legal risk. How should these additional risks be treated? Can the Rule be modified to include separate capital requirements to cover these sources of risk? Please provide relevant data to support your response.

Question 39: Is there an alternative to using a multiplier to account for operational risk, legal risk, and other risks that are difficult to quantify? Is the use of insurance to cover these risks a viable option? Please provide relevant data to support your response.

Question 40: In order for a firm to calculate VAR effectively, data must be aggregated from all its departments worldwide. Also, there is often incompatibility of trading and back-office accounting computer systems that operate from different regions of the world.

How can this problem of integration be adequately addressed?

e. OTC Derivatives Dealer.

Question 41: Should the Commission amend the Rule so that all broker-dealers are eligible to use the methodology for calculating market and credit risk as in proposed Appendix F to the Rule?

Question 42: What minimum capital requirements should the Commission require a broker-dealer to meet to be eligible to use proposed Appendix F? Should the criteria be based on tentative net capital, net capital, or both? Are the $100 million tentative net capital and $20 million net capital requirements appropriate?

Question 43: Assuming that the Commission were to allow all broker-dealers to utilize Proposed Appendix F, what sections in Proposed Appendix F need to be modified for all broker-dealers? Are the market risk and credit risk sections in Proposed Appendix F appropriate for all broker-dealers? Are the qualitative and quantitative requirements for VAR models in Proposed Appendix F appropriate to VAR models used by non-OTC derivatives dealers?

f. Two Tiered Approach.

Question 44: Is a Two Tiered Approach a viable alternative to the current net capital rule? If so, what standards should the Commission utilize to determine which broker-dealers are required to utilize statistical models? Should the tier limits be based on capital, amount of customer business, level of proprietary trading, or some other factor(s)? Should these minimum net capital amounts be fixed dollar amounts or be based on financial ratios such as aggregate indebtedness or aggregate debit items as in the current rule? Please provide relevant data to support your response.

Question 45: Should the current haircut percentages be maintained? If not, what modifications should be made to the current haircut percentages? Please provide relevant data to support your response.

Question 46: What will be the impact on competition among firms in different tiers? In this regard, the Commission seeks comment on the effects of creating a two-tiered system from broker-dealers that do not currently use models in their risk management system and from broker-dealers that currently use models for risk management purposes but either lack sufficient capital or sufficiently diverse securities portfolios to use models for net capital purposes.

g. Base Approach with Pre-Commitment Feature.

Question 47: Is the Base Approach a viable alternative to the current net capital rule?

Question 48: Should the Base Approach only apply to firms that meet certain standards? If so, what are the appropriate standards?

Question 49: What minimum capital requirements should the Commission establish for certain broker-dealer activities? Should these minimum net capital amounts be fixed dollar amounts or based on financial ratios such as aggregate indebtedness or aggregate debit items as in the current rule? Should the current minimum levels be retained?

Question 50: What modifications should the Commission make to the current haircut percentages? Please provide relevant data to support your response.

Question 51: What should be the parameters for the pre-commitment feature? Should firms be penalized for differences between actual results and the results as projected by VAR models? If so, what criteria should be used to determine the additional capital requirements for these differences?

III. Summary of Requests for Comment

Following receipt and review of comments, the Commission will determine whether rulemaking or other action is appropriate. Commenters are invited to discuss the broad range of concepts and approaches described in this release concerning the Commission's regulation of broker-dealers' net capital requirements. In addition to responding to the specific questions presented in this release, the Commission encourages commenters to provide any information to supplement the information and assumptions contained herein regarding the current net capital rule, VAR models, and the other suggested alternatives. The Commission also invites commenters to provide views and data as to the costs and benefits associated with the possible changes discussed above in comparison to the costs and benefits of the current net capital rule. In order for the Commission to assess the impact of changes to the Rule, comment is solicited, without limitation, from investors, broker-dealers, SROs, and other persons involved in the securities markets.

Dated: December 17, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–33400 Filed 12–29–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–39457; File No. S7–33–97]

RIN 3235–AH28

Capital Requirements for Brokers or Dealers Under the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is proposing for comment amendments to Rule 15c3–1 under the Securities Exchange Act of 1934. The proposed amendments would define the term ''nationally recognized statistical rating organization'' (''NRSRO''). The proposed definition sets forth a list of attributes to be considered by the Commission in designating rating organizations as NRSROs and the process for applying for NRSRO designation.

DATES: Comments must be received on or before March 2, 1998.

ADDRESSES: Persons wishing to submit written comments should file three copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6–9, Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–33–97. This file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C., 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, 202/942–0131, Peter R. Geraghty, Assistant Director, 202/942–0177, Louis A. Randazzo, Special Counsel, 202/942–0191, or Michael E. Greene, Staff Attorney, 202/942–4169, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. The Commission's Concept Release

In August 1994, the Commission issued a concept release soliciting public comment on the Commission's role in using the ratings of NRSROs.[1] In the Concept Release, the Commission specifically solicited comments on: (1) Whether it should continue to use the NRSRO concept, and, if so, whether it should define the term ''NRSRO''; and (2) whether the current no-action letter process for designating a rating organization an NRSRO is satisfactory, and, if not, whether the Commission should establish an alternative procedure. The Commission is now

[1] Securities Exchange Act Release No. 34616 (August 31 1994), 59 FR 46314 (September 7, 1994) (''Concept Release'').

proposing to amend the net capital rule to provide a definition of the term ''NRSRO'' that sets forth the criteria that a rating organization must satisfy to be an NRSRO.

B. Summary of the Comments

The Commission received 25 comment letters in response to the Concept Release. The comments generally supported the continued use of the NRSRO concept, but recommended that the Commission adopt a formalized process for designating NRSROs. A few commenters set forth criteria that the Commission should consider to determine whether a rating organization is an NRSRO. In addition, commenters generally opposed formal regulatory oversight of NRSROs. These issues are discussed in greater detail in Sections III and IV below.

C. The Development and Expanded Use of the NRSRO Concept

The term ''NRSRO'' was initially adopted by the Commission in 1975 for the narrow purpose of distinguishing different grades of debt securities under the Commission's net capital rule, Rule 15c3–1.[2] Rule 15c3–1 requires a broker-dealer to reduce the value of the securities positions that it owns by specified percentages (''haircuts'') when calculating its net capital. Broker-dealers that own commercial paper, nonconvertible debt securities, and nonconvertible preferred stock are allowed to reduce their haircuts for these instruments when calculating net capital if the instruments are rated investment grade by at least two NRSROs.[3]

Since its adoption in 1975, the NRSRO concept has expanded beyond its originally intended use under the net capital rule. For example, Congress, in certain mortgage related legislation,[4] and the Commission, in its regulations pursuant to the Securities Act of 1933,[5] the Securities Exchange Act of 1934 (''Exchange Act''),[6] and the Investment Company Act of 1940,[7] use the ratings of NRSROs as proxies to distinguish ''investment grade'' from ''non-investment grade'' debt securities. These references are to an NRSRO as that term is used in Rule 15c3–1; however, the term ''NRSRO'' has not been defined for purposes of the federal securities laws.

D. Current Process for Determining Whether an Entity is an NRSRO

Currently, to determine whether a rating organization is an NRSRO, the Division of Market Regulation (''Division'') staff first reviews the rating organization's operations, position in the marketplace, and other criteria. If the Division staff determines that a rating organization may properly be labelled an NRSRO, the staff issues a letter stating that it will not recommend enforcement action to the Commission if the rating organization is considered by registered broker-dealers to be an NRSRO for purposes of applying the relevant portions of the net capital rule.

In determining whether a rating organization may be considered an NRSRO for purposes of the Commission's rules, the staff considers a number of criteria. The single most important criterion is that the rating organization is nationally recognized, which means the rating organization is recognized in the United States as an issuer of credible and reliable ratings by the predominant users of securities ratings. The Division also examines the operational capability and reliability of each rating organization in conjunction with this standard of national recognition. Included within this assessment are: (1) The organizational structure of the rating organization; (2) the rating organization's financial resources (to determine, among other things, whether it is able to operate independently of economic pressures or control from the companies it rates); (3) the size and quality of the rating organization's staff (to determine if the entity is capable of thoroughly and competently evaluating an issuer's credit); (4) the rating organization's independence from the companies it rates; (5) the rating organization's rating procedures (to determine whether it has systematic procedures designed to produce credible and accurate ratings); and (6) whether the rating organization has internal procedures to prevent the misuse of non-public information and whether those procedures are followed.

The Division's no-action position regarding NRSRO designation is based on representations made to the staff by the rating organization during the no-action process. The no-action letter directs the rating organization to advise the Division of any material change in the facts that serve as the basis for granting the no-action position. For example, material changes in an NRSRO's organizational structure or modifications of its rating practices could affect the NRSRO's standing as a credible evaluator in the credit market. The Division may withdraw a no-action letter designating a particular rating organization as an NRSRO under certain circumstances.

To date, the Commission regards five rating organizations as NRSROs for purposes of the net capital rule: (1) Standard & Poor's Corporation (''Standard & Poor's''); (2) Moody's Investors Service, Inc. (''Moody's''); (3) Fitch IBCA, Inc. (''Fitch IBCA'');[8] (4)

[2] 17 CFR 240.15c3–1.

[3] See 17 CFR 240.15c3–1(c)(2)(vi)(E) (haircuts applicable to commercial paper that has been rated in one of the three highest categories by at least two NRSROs); 17 CFR 240.15c3–1(c)(2)(vi)(F) (haircuts applicable to nonconvertible debt securities that are rated in one of the four highest rating categories by at least two NRSROs); 17 CFR 240.15c3–1(c)(2)(vi)(H) (haircuts applicable to cumulative, nonconvertible preferred stock rated in one of the four highest rating categories by at least two NRSROs).

[4] Pub. L. 98–440, Section 101, 98 Stat. 1689 (1984). See 15 U.S.C. 78c(a)(41).

[5] See, *e.g.*, Regulation S–K (17 CFR 229.10) (a registrant may include NRSRO ratings in its registration statements and periodic reports); Rule 436 (17 CFR 230.436) (rating assigned to a security by an NRSRO shall not be considered part of the registration statement prepared or certified by a person within the meaning of sections 7 and 11 of the Securities Act of 1933); Form S–3 (17 CFR 239.13) (Form S–3 may be used in primary offerings of non-convertible securities and asset-backed securities which are rated investment grade by at least one NRSRO); Forms F–2 and F–3 (17 CFR 239.32, 239.33) (non-convertible securities for purposes of Forms F–2 and F–3 are investment grade securities if, at the time of sale, at least one NRSRO has rated the security in one of its generic rating categories that signifies investment grade).

[6] See, *e.g.*, Rule 101 (17 CFR 242.101) and Rule 102 (17 CFR 242.102) (non-convertible debt securities, nonconvertible preferred securities and asset-backed securities which are rated investment grade by at least one NRSRO are exempt from the provisions of Rule 101 and Rule 102). See also Form 17–H (17 CFR 249.328T) (for each Material Associated Person of a broker-dealer, the broker-dealer must include the name of the NRSRO which has rated a Material Associated Person's commercial paper).

[7] See, e.g., Rule 2a–7(a)(9) (17 CFR 270.2a–7(a)(9)) (an ''eligible security'' is, among other things, a security that has received a short-term rating by the requisite NRSROs in one of the two highest short-term rating categories); Rule 10f–3 (17 CFR 270.10f–3) (municipal securities rated investment grade by at least one NRSRO are exempt from section 10–f of the Investment Company Act of 1940, which prohibits registered investment companies from purchasing certain securities); and Rule 3a–7 (17 CFR 270.3a–7) (issuers of asset-backed securities may not be deemed investment companies for purposes of the Investment Company Act of 1940 if, among other things, fixed-income securities sold by the issuer are rated in one of the four highest categories by at least one NRSRO).

[8] When the net capital rule became effective in 1975, Fitch Investors Service, L.P. (''Fitch''), Standard & Poor's and Moody's were designated as NRSROs by the Division for purposes of the net capital rule. Subsequently, based on requests from rating organizations, the Division provided no-action assurances to Duff & Phelps, BankWatch, IBCA Limited and IBCA Inc. (IBCA Limited and IBCA Inc. are collectively referred to as ''IBCA''). IBCA was designated as an NRSRO for limited purposes. In November 1997, Fitch and IBCA combined to create Fitch IBCA, a successor rating organization. By letter dated November 4, 1997, the Division stated that it would not recommend enforcement action to the Commission if Fitch IBCA succeeded to the NRSRO designation of Fitch for the purposes of applying paragraphs (c)(2)(vi)

Continued

Duff & Phelps Credit Rating Co. (''Duff & Phelps'');[9] and (5) Thomson BankWatch, Inc. (''Bankwatch'').[10]

II. The NRSRO Concept Release

The Concept Release requested comment on whether the Commission should continue to employ an NRSRO concept to distinguish various types of debt and other securities for purposes of its rules. Thirteen commenters discussed the NRSRO concept. Overall, the commenters generally supported the continued use of the NRSRO concept in the net capital and other Commission rules. For example, the Securities Industry Association Capital Committee (''SIA'') believes that the continued use of the NRSRO concept is an integral part of the net capital rule. Additionally, the SIA commented that the use of NRSRO ratings is a vital ingredient of the Commission's efforts to safeguard the capital markets against risks arising from fluctuations in the proprietary positions of securities firms.

Some commenters suggested that the Commission discontinue the use of the NRSRO concept and instead employ statistical models or historical spreads to determine the level of risk associated with a particular instrument. As the SIA commented, however, continued use of the NRSRO concept in the net capital rule would give broker-dealers an objective, simple standard for determining the capital value of a debt instrument under the rule. In contrast, a modelling approach involves a possibly intricate statistical configuration. It is also likely that modelling will work only where there is a deep and liquid market for the instrument because of the difficulty in obtaining prices. It would not be adequate for debt issuers with no previously issued or very old public debt. In order to assist the Commission in determining whether statistical modelling may be appropriate in the future for purposes of the NRSRO concept, the Commission invites comments on practical approaches to the use of statistical models in the context of determining the credit risk of individual financial instruments.

III. Description of the Proposed Amendments

As discussed in more detail below, the proposal would amend Rule 15c3–1 by adopting a new subparagraph (c)(13), which would define the term ''NRSRO.'' As proposed, the definition of NRSRO will include rating organizations designated as NRSROs by the Commission. Designation of such rating organizations as NRSROs would be based upon written application filed with the Director of the Commission's Division of Market Regulation in Washington, D.C.[11] The Commission would consider the attributes currently assessed by the Division in the no-action letter process in determining whether a rating organization is an NRSRO.

IV. Discussion of the Proposed Amendments

A. Proposed Definition of NRSRO in the Net Capital Rule

Having considered the comments received, the Commission proposes to define NRSRO in the net capital rule to include a list of attributes that will be considered by the Commission in designating rating organizations as NRSROs. These attributes are described in more detail below. Under the proposal, rating organizations that have received no-action assurances from the Division will retain whatever NRSRO designation status that they currently possess and will not be required to reapply for NRSRO designation; however, the Commission will conduct reviews of the current NRSROs to assure that they meet the requirements in the proposed definition. In the event the Commission determines that any such rating organization does not satisfy the requirements set forth in the proposed rule, the Commission will act to revoke the NRSRO designation.

The Commission believes that defining the term ''NRSRO'' in the net capital rule should provide clarity and limit concerns regarding any perceived arbitrariness in the current process of designating NRSRO status.

B. Criteria in the Definition of NRSRO

Commenters generally recommended that the Commission adopt procedures for designating NRSRO status that clearly identify the criteria a rating organization must possess. Specifically, commenters recommended that the Commission formalize the current no-action letter criteria for designating NRSROs in a Commission rule. For example, various rating organizations recommended including the requirement of national recognition and market acceptance of the organizations' ratings.

Consistent with the comment letters received, an NRSRO would include any rating organization designated by the Commission after considering a list of attributes similar to the criteria currently considered by the Division in the no-action letter process. The rating organization would have to meet each criterion in order to be designated as an NRSRO. The Commission's designation would apply only to a rating organization's opinion concerning the creditworthiness of debt instruments. The Commission notes that other opinions and views of the rating organization would be outside the scope of the NRSRO designation.

The attributes the Commission would consider are: (1) National recognition, which means that the rating organization is recognized as an issuer of credible and reliable ratings by the predominant users of securities ratings in the United States; (2) adequate staffing, financial resources, and organizational structure to ensure that it can issue credible and reliable ratings of the debt of issuers, including the ability to operate independently of economic pressures or control by companies it rates and a sufficient number of staff members qualified in terms of education and experience to thoroughly and competently evaluate an issuer's credit; (3) use of systematic rating procedures that are designed to ensure credible and accurate ratings;[12] (4) extent of contacts with the management of issuers, including access to senior level management of the issuers;[13] and (5) internal procedures to prevent misuse of non-public information and compliance with these procedures.[14] In addition to

(E), (F), and (H) of the net capital rule to all debt. Subsequent to the transfer of the ownership of IBCA to Fitch IBCA, IBCA was no longer considered to be an NRSRO. See Letter regarding Fitch IBCA Inc. (November 4, 1997).

[9] See Letter regarding Duff & Phelps, Inc. (February 24, 1982).

[10] See Letter regarding Thomson BankWatch, Inc. (August 6, 1991). BankWatch is recognized as an NRSRO only for the purposes of rating debt issued by banks, bank holding companies, non-bank banks, thrifts, broker-dealers, and broker-dealers' parent companies.

[11] The Commission understands that a rating organization's application may contain commercial or financial information that is confidential. It is the responsibility of the rating organization to request confidentiality under the appropriate Commission rules. See 17 CFR 200.83. The Commission believes, however, that the cover letter from the rating organization requesting NRSRO designation and any response by the Commission would be publicly available.

[12] The Commission believes that a systematic rating procedure should help to ensure that the same or similar analysis is conducted for all issues rated. In addition, the ratings should be structured in such a way that the different rating categories are easily identifiable.

[13] The Commission believes that rating organizations that have access to senior management are better able to make subjective opinions regarding the risks associated with the issue.

[14] The Commission believes that maintaining these procedures should help ensure that the issuer's management is comfortable with providing the rating organization all information necessary for the rating organization to make reliable subjective opinions about the risks associated with the issue.

the attributes noted above, the proposal would require a rating organization to be registered with the Commission as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') in order to be designated as an NRSRO.[15]

By specifying required criteria in the definition of NRSRO, the Commission will be able to promulgate the characteristics that are necessary for NRSRO designation, thereby assuring rating organizations that if they possess such characteristics, they will likely be designated, and will remain, NRSROs. Similar to the no-action letter process, however, the Commission is reserving the ability to withdraw designation if a rating organization fails to maintain the requisite criteria. Accordingly, a rating organization designated as an NRSRO would be required to notify the Commission when it experiences material changes that may affect its ability to continue to meet any of the requisite criteria. For example, material changes in an NRSRO's organizational structure or modifications of its rating practices could affect the NRSRO's standing in the credit market that could warrant withdrawing NRSRO designation. Codifying the current NRSRO designation would ensure that the process is transparent and applied consistently.

C. Application Process

A rating organization seeking NRSRO designation would be required to file an application with the Director of the Commission's Division of Market Regulation in Washington, D.C. The rating organization would be required to include in the application detailed information explaining how the rating organization satisfies the attributes necessary for NRSRO designation. The rating organization also would be required to file any additional information subsequently requested by the Division.

D. Delegation of Authority to the Division

The Commission proposes to delegate authority to the Division to examine rating organizations' applications and to designate a rating organization as an NRSRO or to deny such designation.[16] Under the proposed amendments, the Division would not have delegated authority to revoke or withdraw any previously granted designation. Delegating authority to the Division will allow rating organizations that receive an adverse decision from the Division to seek Commission review. Pursuant to the Commission's Rules of Practice, any person aggrieved by an action made by delegated authority may seek Commission review of the action by filing a petition for review with the Commission.[17] The Commission may preside over or, if it so orders, designate a hearing officer to preside over any proceeding instituted to review a determination made pursuant to delegated authority. The Commission may, at its discretion, designate an administrative law judge as the hearing officer presiding over such proceedings.[18]

E. Charging Fees Based on the Size of the Transaction

In the Concept Release, the Commission requested comments on the practice of NRSROs charging issuers for ratings and whether it is appropriate for an NRSRO to charge an issuer fees based on the size of the transaction being rated.

Fourteen commenters offered views on this practice. As a general matter, they did not oppose NRSROs charging issuers for ratings. Various commenters expressed concern, however, regarding charging fees based upon the size of the transaction. For example, one rating organization commented that it is not appropriate for rating organizations to charge issuers based upon the size of the transaction because the large fees received may cause the rating organization to have an interest in whether the issue is successful or unsuccessful. In addition, the rating organization commented that basing fees on the size of an issue may compromise the rating organization's objectivity in rating the issue.

In particular, the Commission is concerned that a rating organization may be tempted to give a more favorable rating to a large issue because of the large fee and to encourage the issuer to submit future large issues to the rating organization. The Commission invites further comment on whether the use of this practice should be added as a criterion in the definition of an NRSRO.

V. Request for Comments

In response to the Concept Release, some commenters suggested using objective criteria in the definition of NRSRO. The Commission's concerns about using objective criteria is that it could lead to unintended results and possible manipulation of the NRSRO designation process. A rating organization may meet the basic objective criteria standard, but have no credibility in the marketplace. For example, using the number of persons employed by a rating organization as one of the criteria would not take into consideration qualifications of the employees with respect to rating issuer's securities. On the other hand, a rating organization may have a solid reputation for publishing reliable ratings, but may not meet an objective criteria, such as a minimum number of employees. The Commission, however, invites comment on whether objective criteria should be used to determine NRSRO designation and the types of objective criteria that should be considered.

The Commission also invites comment on whether a specific time period should be established for the Commission to act on an application. If such a period is considered appropriate, the Commission also seeks comment on whether a time period in the range of 180 to 365 calendar days would be appropriate.

In addition, concerns have been raised to the Commission about the fact that some ratings may not be generally available to the public and may be restricted only to subscribers. Because the Commission is proposing to provide rating organizations with the NRSRO designation, the Commission invites comment on whether NRSROs should be required to provide their ratings to the public. The Commission also invites interested persons to submit written data, views, arguments and/or comments on the other aspects of the proposed amendments.

[15] All currently designated NRSROs are registered with the Commission under the Advisers Act. Although section 203A of the Advisers Act prohibits investment advisers that have less than $25 million of assets under management to register with the Commission, the Commission has exempted investment advisers that are designated as NRSROs from this prohibition. See rule 203A–2 [17 CFR 275.203A–2].

As proposed, a rating organization must be registered as an investment adviser under the Advisers Act and maintain such registration as a condition of receiving and retaining its NRSRO designation. A rating organization applying for designation as an NRSRO that is not registered as an investment adviser, because, for example, it does not have $25 million of assets under management, would have to register under rule 203A–2(d) under the Advisers Act, which permits an investment adviser that reasonably expects to be eligible for Commission registration within 120 days of registering with the Commission to register with the Commission even though it may not otherwise meet the criteria for Commission registration under section 203A of the Advisers Act. Once a rating organization is registered as an investment adviser, it must maintain its registration. Otherwise, its NRSRO designation will void automatically.

[16] The Commission proposes to amend Rule 200.30–3, which provides for delegation of authority to the Director of the Division of Market Regulation, to include the designation of NRSROs. See 17 CFR 200.30–3.

[17] See 17 CFR 201.430.

[18] See 17 CFR 201.110.

VI. Costs and Benefits of the Proposed Amendments and Their Effects on Competition

To assist the Commission in its evaluation of the costs and benefits that may result from the proposed rule amendments, commenters are requested to provide analyses and data relating to the costs and benefits associated with any of the proposals herein. The Commission believes the benefit of the proposed definition will be to make its current practice of designating NRSROs more transparent and formalized. The Commission preliminarily believes that the proposed amendments will benefit all market participants by clarifying the basis for designating NRSROs and making the designation process more transparent. The amendments also will provide an appeal process for rating organizations that have been denied NRSRO designation. The amendments will impose no additional compliance burdens on broker-dealers and will not impede efficiency, competition, and capital formation, because they merely codify the current criteria a credit rating organization must meet in order to be designated as an NRSRO. The costs associated with the rule proposal would not differ significantly from those incurred under the current no-action letter process.[19] The proposed amendments would not change the basis by which broker-dealers determine the deductions applicable to their proprietary securities. Section 23(a) of the Exchange Act, 15 U.S.C. 78w(a)(2), requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effect of the rule, if any. The Commission has considered the proposed amendments in light of this standard and believes, preliminarily, that if adopted, they would not likely impose any significant burden on competition that is not necessary or appropriate in furtherance of the Exchange Act. The Commission solicits comment on this preliminary view.

VII. Summary of Initial Regulatory Flexibility Analysis

In accordance with 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') concerning the proposed amendments. The IRFA notes that the purpose of the proposed amendments is to make the NRSRO designation process open and transparent by defining the term ''NRSRO'' for purposes of the net capital rule to provide a list of attributes that would be considered by the Commission in designating rating organizations as NRSROs. The IRFA indicates that the proposed amendments would apply to all credit rating organizations that request NRSRO designation.

The IRFA further indicates that in the past, the Commission has only designated seven credit rating organizations as NRSROs. In addition, only seven other credit rating organizations have requested designation as an NRSRO. Because the Commission cannot determine the number of entities that may request NRSRO designation in the future, it is difficult to estimate the number of small entities that may be subject to the proposed amendments. However, due to the fact that only seven credit rating organizations have been designated as NRSROs and only seven other entities have requested NRSRO designation, the IRFA adds that it appears that very few small entities, if any, as contemplated by the Regulatory Flexibility Act[20], will be subject to the proposed amendments. In addition, the IRFA states that the proposed amendments require the filing of an application and notification of any material changes in the NRSROs business and that no federal rules duplicate, overlap, or conflict with, the proposed amendments. Furthermore, the IRFA states that the Commission does not believe that any less burdensome alternatives are available to accomplish the objectives of the proposed amendments.

The Commission encourages the submission of comments with respect to any aspect of the IRFA. Comment specifically is requested on the number of small entities that would be affected by the proposed rules. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rules are adopted, and will be placed in the same public file as comments on the proposed rules themselves. Comment letters should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6–9, Washington, D.C. 20549. Comments also may be submitted electronically at the following E-Mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–33–97. This file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C., 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov). A copy of the IRFA may be obtained by contacting Michael E. Greene, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 2–2, Washington, D.C. 20549.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''), the Commission is also requesting information regarding the potential impact of the proposed rule on the economy on an annual basis. The Commission preliminarily believes that the proposed amendments do not constitute a ''major rule'' for purposes of SBREFA based on the criteria used to determine what constitutes a ''major rule'' under SBREFA. Commenters should provide empirical data to support their views.

VIII. Paperwork Reduction Act

Certain provisions of the proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA''),[21] and the Commission has submitted them to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is: ''Net Capital Requirements for Brokers or Dealers: Definitions: NRSRO.''

A. Collection of Information Under Proposed Amendments

The proposed amendments would require credit rating organizations that desire designation as NRSROs to submit certain information to the Commission in order to obtain such designation and to report to the Commission in the event of any material change in their status.

[19] The average time to complete an application is estimated to be 100 hours. *See infra* section VIII D.

[20] 5 U.S.C. 601 *et seq.* The Regulatory Flexibility Act states that the term ''small entity'' shall have the same meaning as the term ''small business'' under the Regulatory Flexibility Act. According to section 601(3) under the Regulatory Flexibility Act, ''the term 'small business' has the same meaning as the term 'small business concern'' under section 3 of the Small Business Act (15 U.S.C. 632), unless an agency, after consultation with the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**''. If the agency has not defined the term for a particular purpose, the Small Business Act states that ''a small business concern, * * *, shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation.'' Because the Commission has not defined the term ''small entity'' in the context of NRSROs for purposes of the Regulatory Flexibility Act, for purposes of this rulemaking, the Commission is using the broader definition of ''small business concern'' as defined in the Small Business Act. Furthermore, based on this broader definition, it appears that none of the current NRSROs would be considered small entities for purposes of the Regulatory Flexibility Act.

[21] 44 U.S.C. 3501 *et seq.*

B. Proposed Use of Information

The information collected pursuant to the proposed amendments would be used only by the Commission. No other governmental agency or third party would regularly receive any of the information described above. The Commission would use the information required by the proposed amendments in determining whether to designate a credit rating organization as an NRSRO.

C. Respondents

The proposed amendments would apply to those credit rating organizations that desire designation as an NRSRO by the Commission.

D. Total Annual Reporting and Recordkeeping Burden

The proposed amendments require a one-time application process, which includes any amendments to the initial application. Therefore, there is no recurring reporting or recordkeeping requirement and thus no annual reporting or recordkeeping requirement. However, it is estimated that on an annual basis there will be ten respondents to this collection of information. It is also estimated that the time to complete the proposed collection of information is 100 hours.

E. General Information About the Collection of Information

The collection of information under the proposed amendments would be required in order to obtain NRSRO designation. There would be no obligation on the NRSRO to retain the information submitted to the Commission to obtain NRSRO designation. Any information received by the Commission pursuant to the proposed amendments would be kept confidential (except the cover letter), subject to the provisions of the Freedom of Information Act, 5 U.S.C. 552 and the Commission's regulations thereunder (17 CFR 200.80). The proposed amendments do not mandate a time period for retaining the information submitted to the Commission by credit rating organizations applying for NRSRO designation. Seeking the NRSRO designation is voluntary; however, for rating organizations that desire the NRSRO designation, the obligation to respond to the collection of information is mandatory. Persons should be aware that the Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

F. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

(i) evaluate whether the proposed collection of information is necessary for the proposed performance of the functions of the agency, including whether the information shall have practical utility;

(ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, and refer to File No. S7–33–97. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this release in the **Federal Register**, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of this publication.

IX. Statutory Analysis

Pursuant to the Securities Exchange Act of 1934 and particularly Sections 3(b), 15(c)(3), 17, and 23 thereof, 15 U.S.C. 78c(b), 78o(c)(3), 78q, and 78w, the Commission proposes to amend 240.15c3–1 of Title 17 of the Code of Federal Regulations in the manner set forth below.

X. List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

XI. Text of the Proposed Rule Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulation is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.15c3–1 is amended by adding paragraph (c)(13) to read as follows:

§ 240.15c3–1 Net capital requirements for brokers or dealers.

* * * * *

(c) * * *

* * * * *

(13)(i) The term *nationally recognized statistical rating organization* (''NRSRO'') means any entity that:

(A) Issues ratings which are current assessments of the creditworthiness of obligors with respect to specific securities or money market instruments and that is registered under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) and

(B) Is designated as an NRSRO by the Commission.

(ii) The Commission will consider the following attributes in determining whether to grant NRSRO status:

(A) Recognition of the rating organization in the United States as an issuer of credible and reliable ratings by users of securities ratings;

(B) Adequate staffing, financial resources, and organizational structure to ensure that it can issue credible and reliable ratings of the debt of issuers, including a sufficient number of qualified staff members and the ability to operate independently of economic pressures or control by companies that it rates;

(C) Use of systematic rating procedures that are designed to ensure credible and accurate ratings;

(D) Extent of contacts with the management of issuers, including access to senior level management of issuers; and

(E) Internal procedures to prevent misuse of non-public information and compliance with these procedures.

(iii) A rating organization seeking NRSRO designation shall file an application with the Director of the Commission's Division of Market Regulation in Washington, DC. The application should provide detailed information explaining how the rating organization satisfies the attributes set forth in paragraph (c)(13)(i) of this section. The rating organization shall also file any additional information subsequently requested by the Commission relating to the attributes set forth in paragraph (c)(13)(i) of this section.

(iv) An NRSRO shall notify the Director of the Commission's Division of Market Regulation of any material changes that occur in the facts and circumstances of this application for an NRSRO designation.

(v) In the event it is determined that an NRSRO no longer satisfies all of the attributes set forth in (c)(13)(i) of this section, the Commission may revoke or withdraw NRSRO designation.

* * * * *

Dated: December 17, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–33402 Filed 12–29–97; 8:45 am]

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federal register

Tuesday
December 30, 1997

Part III

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–5939–4]

RIN 2060–AF35

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On July 14, 1992, EPA published a final rule in the **Federal Register**, pursuant to section 609 of the Clean Air Act, as amended (the Act), establishing standards and requirements regarding the servicing of motor vehicle air conditioners (MVACs) that use chlorofluorocarbon-12 (CFC–12), a class I refrigerant, and establishing restrictions on the sale of small containers of class I or class II refrigerants.

Pursuant to section 609(b)(1), today's final rule establishes standards and requirements for the servicing of MVACs that use any refrigerant other than CFC–12. Today's rule also provides that refrigerant (whether CFC–12 or a substitute) recovered from motor vehicles located at motor vehicle disposal facilities may be re-used in the MVAC service sector only if it has been properly recovered and reclaimed, or if it has been properly recovered by persons who are either employees, owners or operators of the facilities, or technicians certified under section 609 of the Act, using approved equipment, and subsequently recycled using approved refrigerant recycling equipment prior to use in recharging an MVAC or MVAC-like appliance. The rule also establishes conditions under which owners and operators of motor vehicle disposal facilities may sell refrigerant recovered from such vehicles to technicians certified under section 609 of the act. Finally, the rule establishes standards for mobile recovery and recycling service of MVACs. The rule also clarifies certain provisions in the existing regulatory text.

Today's rule increases industry flexibility in selecting and purchasing proper recovery and recycling equipment by establishing standards for equipment that recovers and/or recycles refrigerants other than CFC–12, and by approving independent testing organizations that certify such equipment.

This final action facilitates compliance with section 608(c)(2) of the Act, which prohibits venting refrigerants to the atmosphere. By promoting the recycling or reclamation of all refrigerants from MVACs and MVAC-like appliances, this rule will help to lower the risk of depletion of the stratospheric ozone layer and the possibility of global climate change, thus diminishing potentially harmful effects to human health and the environment, including increased incidences of certain skin cancers and cataracts.

DATES: This final rule is effective January 29, 1998.

ADDRESSES: Comments and materials supporting this rulemaking are contained in Public Docket No. A–95–34 in room M–1500, Waterside Mall (Ground Floor), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The docket may be inspected from 8:30 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Christine Dibble, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street SW., Washington, DC 20460. (202) 564–9147 or electronically at dibble.christine@epamail.epa.gov. The Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background
A. Statutory Authority; July 14, 1992 Final Rule and May 2, 1995 Supplemental Final Rule
B. Venting Prohibition; Application of Rules to Replacement Refrigerants
II. Summary of Public Participation
III. Summary of Major Public Comments
IV. Today's Final Rule
A. Service Practices
1. Handling Refrigerant Recovered from Vehicles Bound for Disposal and Located at Motor Vehicle Disposal Facilities
2. Mobile Recovery and Recycling
3. Topping Off
4. Recharging Refrigerant Into the Same Vehicle From Which the Refrigerant was Extracted
B. Equipment Standards
1. Standard for HFC–134a Recover/Recycle Equipment
2. Standard for HFC–134a Recover-only Equipment
3. Standard for Automotive Refrigerant Recycling Equipment Intended for Use With Both CFC–12 and HFC–134a
4. Standard for Recover-only Equipment That Extracts a Single, Specific Refrigerant other Than CFC–12 or HFC–134a
C. Substantially Identical Equipment
D. Approved Independent Standards Testing Organizations
E. Technician Training and Certification
F. Sales Restriction
V. Summary of Supporting Analyses
A. Executive Order 12866
B. Regulatory Flexibility/Fairness to Small Entities
C. Paperwork Reduction Act
D. Unfunded Mandates Reform Act
E. Submission to Congress and the General Accounting Office

Entities potentially regulated by this action are those that service or dispose of motor vehicle air conditioners. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Independent repair shops. Service stations. Truck fleet shops. Collision repair shops. Franchised repair shops. New car and truck dealers. Car and truck rental shops. Radiator repair shops. Vocational technical schools. Farm equipment dealers. Automobile rental and leasing facilities.
Federal Government.	Military repair shops. Fleet repair shops.
State/Tribal/Local Government.	Fleet repair shops.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business, organization, etc. is regulated by this action, you should carefully examine the applicability criteria in section 609 of the Clean Air Act and in the regulations promulgated thereunder at 40 CFR 82.30 *et seq.* If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Background

A. Statutory Authority; July 14, 1992 Final Rule and May 2, 1995 Supplemental Final Rule

Title VI of the Act is designed to protect the stratospheric ozone layer. Section 609 of the Act requires the Administrator to promulgate regulations establishing standards and requirements

regarding the servicing of motor vehicle air conditioners (MVACs). On July 14, 1992, the Agency published a final rule initially implementing section 609. In that rule, the Agency prohibited the repair or servicing of any MVAC for consideration if such repair or servicing involved the air conditioner refrigerant, unless performed by a trained and certified technician who properly uses approved refrigerant recycling equipment. The Agency also prohibited the sale or distribution of any class I or class II substance (i.e., CFC or HCFC) suitable for use in an MVAC that is in a container of less than 20 pounds, to anyone other than a properly trained and certified section 609 technician.

The July 14, 1992 final rule defined ''approved refrigerant recycling equipment'' as equipment that recovers and recycles CFC–12 refrigerant and purifies the refrigerant on-site, and that is certified by the Administrator or by an independent standards testing organization approved by the Agency as meeting the standards set forth in appendix A in the rule.

The regulatory equipment standards are based on those developed by the Society of Automotive Engineers (SAE) and cover service procedures for recovering CFC–12 (SAE J1989, issued in October 1989), test procedures to evaluate CFC–12 recover/recycle equipment (SAE J1990, issued in October 1989 and revised in 1991) and a purity standard for recycled CFC–12 refrigerant (SAE J1991, issued in October 1989). CFC–12 recycling equipment was also considered approved if it was purchased before September 4, 1991 (the date on which the July 14, 1992 rule was proposed), and is substantially identical to the certified equipment. Only equipment certified to meet the standards set forth in appendix A, or to meet the criteria for substantially identical equipment, was approved under section 609 of the Act for use in the servicing of motor vehicle air conditioners.

The July 14, 1992 rule also established standards by which (i) an independent standards testing organization may apply to the Agency for approval to test and approve refrigerant recycling equipment, and (ii) a training and certification program may apply to the Agency for approval to train and certify technicians in the proper use of refrigerant recycling equipment for MVACs. Underwriters Laboratories (UL) and ETL Testing Laboratories (ETL) are the approved independent standards testing organizations that currently certify equipment using the standards that appear in appendix A of the rule. Finally, the rule established various recordkeeping and reporting requirements.

As stated above, section 609 prohibits the sale or distribution of any class I or class II substance suitable for use in an MVAC that is in a container of less than 20 pounds to anyone other than a properly trained and certified section 609 technician. It should be noted, however, that EPA expanded this prohibition in the regulations published on May 14, 1993 at 58 FR 28712 under section 608 of the Act (40 CFR 82.154(n)), which prohibits the sale as of November 14, 1994 of any size container of a class I or class II substance, including refrigerant blends that include class I or class II substances, to other than technicians certified under section 608 or section 609 of the Act.

The July 14, 1992 rule reserved standards for equipment that extracts but does not recycle CFC–12 refrigerant (recover-only equipment) in Appendix B to the rule. On May 2, 1995, EPA published a final rule establishing regulatory standards, again based on standards developed by SAE, which apply to certification of CFC–12 recover-only equipment. Specifically, for recover-only equipment, the Agency adopted (i) the recommended service procedure for the containment of CFC–12 (SAE J1989, issued in October 1989 and set forth in appendix A), and (ii) test procedures to evaluate recover-only equipment (SAE J2209, issued in June 1992). The definition of ''approved refrigerant recycling equipment'' was also expanded to include this recover-only equipment. UL and ETL were also approved to certify recover-only equipment. Finally, service technicians previously certified to handle recover/recycle equipment were grandfathered so that they would not have to be recertified to handle recover-only equipment.

B. Venting Prohibition; Application of Rules to Replacement Refrigerants

Many replacement refrigerants for CFC–12 in automotive applications are blends of chemicals that include HCFCs, which are class II substances. As class II blends, these refrigerants have been subject since the inception of the Title VI requirements to all of the same rules and restrictions that apply to CFC–12: they may not be vented into the atmosphere; they may only be purchased by certified technicians, and in small cans only by section 609 certified technicians; and they must be recovered by section 609 certified technicians and either recycled on-site or reclaimed off-site prior to reuse. Today's rule establishes a standard for equipment that extracts such blends but does not recycle them. EPA is currently working with the industry to determine what standard is appropriate for equipment that can safely recycle these blend refrigerants.

Because HFC–134a is a non-ozone-depleting chemical, and is therefore not classified as a class I or class II substance, the regulations set forth under Title VI of the Act governing its use are somewhat different. Section 609 of the Act defines ''refrigerant'' so that, beginning on November 15, 1995, the term includes any substance that substitutes for a class I or II substance used in an MVAC. Section 608 of the Act provides that, beginning on November 15, 1995, any substance substituting for a class I or class II substance may not be vented into the atmosphere. Therefore, on that date, it became illegal to vent HFC–134a, even though it does not contribute to ozone depletion. (Venting of CFC–12 substitutes that contain class II substances was already prohibited.) Because venting was prohibited, recovery of HFC–134a has been de facto required since November 15, 1995. Recycling HFC–134a in approved equipment, however, has not been required. The publication today of standards for equipment that recovers and recycles HFC–134a initiates a requirement to recycle HFC–134a, beginning on the effective date of this rule. A summary of today's rule is set forth in section IV below.

II. Summary of Public Participation

During the public comment period, the Agency received 27 sets of comments that are addressed in this action. In addition, EPA received and considered additional comments submitted to the Agency after the thirty-day comment period ended. All comments considered in this final action are contained in the Air Docket. No commenter requested a public hearing.

III. Summary of Major Public Comments

This rule was originally proposed for public comment in the March 6, 1996 **Federal Register** (61 FR 9014). Comments to this rule were submitted between March 6, 1996 and April 5, 1996. The vast majority of comments discussed the proposed clarification of required service practices for motor vehicle disposal facilities. The remainder of comments addressed the proposed service practices for mobile recovery and recycling; the standards for recovery and recycling equipment

designed for use with HFC–134a or other replacement refrigerants; training and certification of technicians; and potential future restrictions on the sale of HFC–134a.

Several commenters disagreed with certain minor technical provisions contained in the Society of Automotive Engineers (SAE) standards that are being adopted in this rule. Some of these comments will be addressed in more detail below. None of these comments is being incorporated by the Agency in today's rule, however, because in all instances, the Agency believes that the value of EPA legally mandating exactly the same standards previously adopted on a wide scale by the automotive service industry outweighs any benefit brought by incorporating the minor changes suggested. A legally mandated standard adopted by EPA that is different from a widely used voluntary industry standard would cause significant confusion within the affected industry.

For example, one commenter requested that labels for recovery/recycling equipment state ''Caution—Should Be Operated by Qualified Personnel'' rather than ''Caution—Should Be Operated by Certified Personnel.'' The commenter correctly pointed out that owners and operators of salvage yards and other automotive recycling facilities are qualified under Title VI to handle recovery/recycling equipment, but are not certified technicians. If EPA adopted this provision into its standard, however, then equipment labels would have to contain both statements, if the labels were to meet both the voluntary industry standard set forth by SAE, and the mandated standard promulgated by EPA. The resulting label would only serve to confuse anyone reading it. The Agency believes that the benefit of making the label slightly more accurate is outweighed by the advantages brought by consistency between industry and government standards.

Commenters generally supported the proposed standards for recovery and recycling equipment, and for the training and certification of technicians, and very strongly supported EPA's proposal to explicitly permit the use of mobile recovery and recycling equipment to service MVACs.

Commenters extensively discussed the proposed clarification of EPA regulations governing who may recover refrigerant from motor vehicles bound for disposal, who may purchase such refrigerant, and under what conditions such refrigerant may be re-used. In general, the commenters either supported the proposed standards that would allow owners, operators, and employees of motor vehicle disposal facilities to recover and sell to section 609 technicians refrigerants recovered from motor vehicles destined for disposal, or claimed that the proposed standards, as written, would not serve to protect the national refrigerant supply or the environment because they would allow untrained technicians to service and sell refrigerants in the marketplace.

Those supporting the proposed changes/clarification claimed that both motor vehicle disposal facilities and service technicians who install refrigerants in MVAC systems have an economic stake in ensuring that refrigerants are properly identified, recovered, handled, recycled or reclaimed, and installed. The supporters also suggested that the rule would increase the value of the refrigerant to motor vehicle disposal facilities by decreasing shipping costs and increasing the number of buyers for recovered refrigerant. Those commenters who did not fully support the proposed rule asserted that training, certification, and refrigerant identification requirements, as well as specific sales prohibitions, should be incorporated into the rule to better protect the refrigerant supply and the environment. They felt that untrained operators would be more likely to vent refrigerants and cause contamination problems, and that the minimal training expense, in combination with the increasing need to become informed regarding recently commercialized substitute refrigerants, warrant a training requirement for individuals involved with refrigerant recovery and subsequent sales. As a consequence, a large number of commenters urged EPA to require owners, operators and employees of motor vehicle disposal facilities to become certified technicians under section 609 of the Act in order to recover refrigerant from MVAC systems. Several commenters also requested that the Agency require that any refrigerant recovered from MVACs at motor vehicle disposal facilities be sent directly to a reclaimer, as is currently required for refrigerant recovered from stationary equipment such as household refrigerators and air conditioners, when that equipment is to be dismantled and salvaged. The major comments to the proposal will be discussed in further detail below.

EPA's responses to specific comments are set forth in section IV, Today's Final Rule, below.

IV. Today's Final Rule

Today's rule further implements sections 608 and 609 of the Act. This section of the preamble reviews the elements of the rule and addresses the major comments to those elements. Specifically, the regulations:

(i) Explicitly permit, under specified conditions, technicians certified under section 609 of the Act who recover refrigerant (whether CFC–12 or a replacement) from motor vehicles located at disposal facilities and bound for disposal and who recycle that refrigerant to use the refrigerant to charge or recharge an MVAC or MVAC-like appliance. It also explicitly permits, under specified conditions, owners or operators of motor vehicle disposal and recycling facilities, salvage yards, scrap recyclers, landfills or other motor vehicle disposal facilities where such vehicles may be located, to sell refrigerant recovered from such vehicles (whether CFC–12 or a replacement) to section 609 certified technicians without recycling the recovered refrigerant. These conditions are as follows:

(a) Any refrigerant that is extracted from an MVAC or an MVAC-like appliance bound for disposal and located at a motor vehicle disposal facility may not be subsequently used to charge or recharge an MVAC or MVAC-like appliance, unless, prior to such charging or recharging, the refrigerant is either (1) recovered and reclaimed in accordance with the regulations promulgated in subpart F (the section 608 regulations), or (2) recovered using approved refrigerant recycling equipment dedicated for use with MVACs and MVAC-like appliances, either by a technician certified under section 609, or by an employee, owner, or operator of the disposal facility, and subsequently recycled by the facility that charges or recharges the refrigerant into an MVAC or MVAC-like appliance, using approved refrigerant recycling equipment in accordance with any applicable recommended service procedures.

(b) Any class I or class II substance extracted from an MVAC or an MVAC-like appliance bound for disposal and located at a motor vehicle disposal facility, which is not recovered and reclaimed in accordance with the section 608 regulations, may be sold prior to its subsequent re-use only to a section 609 certified technician.

(c) Any section 609 certified technician who obtains such a class I or class II substance may subsequently re-use such refrigerant only in an MVAC or MVAC-like appliance, and only if it has been reclaimed or properly recycled.

(ii) Revise the definition of ''properly using'' to explicitly permit and establish

standards for mobile recovery and recycling service of MVACs;

(iii) Clarify that the definition of ''service involving refrigerant'' includes service performed by facilities that charge refrigerant into vehicles but do not perform any other kind of refrigerant servicing or repair (*i.e.*, facilities that ''top off'' only);

(iv) Further clarify that ''properly using'' recover/recycling equipment entails recycling refrigerant prior to recharging it into a vehicle, even if the vehicle is the same vehicle from which the refrigerant was extracted;

(v) Establish a standard for recover/recycle equipment that extracts and recycles HFC–134a from MVACs;

(vi) Establish a standard for recover-only equipment that extracts HFC–134a from MVACs;

(vii) Establish a standard for recover-only equipment designed to extract a single, specific refrigerant other than CFC–12 and HFC–134a;

(viii) Establish a standard for recover-recycle equipment that extracts and recycles both CFC–12 and HFC–134a using a common refrigerant circuit;

(ix) Revise the requirements for Agency approval of independent standards testing organizations to include certification of recover/recycle and recover-only equipment designed to service MVAC systems that use refrigerants other than CFC–12; and

(x) Revise the criteria for approval of technician training and certification programs to reflect the use of recover/recycle and recover-only equipment designed to service MVAC systems that use refrigerants other than CFC–12.

In addition, in this notice EPA describes its intention to grandfather technicians currently certified under section 609, so that they will not need to be recertified to operate recover/recycle and recover-only equipment designed to service MVAC systems that use refrigerants other than CFC–12.

A. Service Practices

Today's rule clarifies the Agency's position on four types of refrigerant service that have not previously been explicitly addressed in the section 609 regulations: (i) The recovery of refrigerant from motor vehicles located at a motor vehicle disposal facility and bound for disposal, and the subsequent purchase and re-use of such refrigerant; (ii) mobile recovery and recycling service, *i.e.*, service in which approved recover-only or recover/recycle equipment is transported to the location of an MVAC for servicing by a certified technician; (iii) service performed by facilities that charge refrigerant into vehicles but do not perform any other kind of refrigerant servicing or repair (*i.e.*, facilities that ''top off'' only); and (iv) service that involves recharging refrigerant into the same vehicle from which that refrigerant was extracted.

The service practice regulations being promulgated today for MVACs also apply to MVAC-like appliances (such as air-conditioning systems in off-road equipment such as tractors and other farm equipment, construction equipment, and mining and quarry equipment, that meet the definition of MVAC-like appliances set forth in 40 CFR 82.152). MVAC-like appliances have traditionally been governed under section 608 of the Act rather than under section 609. However, the section 608 regulations contained in subpart F that apply to MVAC-like appliances generally refer back to the section 609 standards contained in subpart B. For example, § 82.156(a)(5) states that persons opening MVAC-like appliances for maintenance, service or repair may do so only when properly using equipment pursuant to § 82.32(e), and § 82.158 (a) and (f) state that manufacturers of recycling equipment used to service or repair MVAC-like appliances must have the equipment certified pursuant to § 82.36(a).

Because MVAC-like appliances have been ostensibly governed under section 608, EPA stated in the proposal to this rule that service practice regulations governing MVAC-like appliances, similar to those in today's rule that govern MVACs, would be proposed and finalized in a separate rulemaking that amends section 608. Since the publication of the proposal to today's rule, however, EPA has determined that those service practice regulations that apply to MVAC-like appliances should be contained in today's final rule, rather than in the section 608 rule. The Agency is making this change for a number of reasons.

Practically speaking, EPA's changes to the regulations will have the same actual effect on the servicing of MVAC-like appliances, no matter whether the changes are made under the section 609 regulations or the section 608 regulations. At the time of the publication of the proposal to today's rule, EPA believed that the proposal and final rule in this separate section 608 rulemaking would be published at about the same time as this section 609 rule. The changes to the section 608 regulations that include the new service practice regulations governing MVAC-like appliances would therefore take effect on or about the effective date of the changes to the section 609 regulations that include new service practice regulations governing MVACs. The intended schedule for the section 608 rulemaking has been delayed, however, so that today's final rule under section 609 will most likely be published before the proposal for the section 608 rule is published. EPA's publication of the service practice regulations that govern MVAC-like appliances under subpart F would create a disparity when identical changes in the service practice regulations would affect MVACs and MVAC-like appliances; regulations that affect MVACs on the effective date of today's rule would most likely not affect MVAC-like appliances for a year or more.

EPA believes that such a delay would create confusion within the motor vehicle service industry, a large segment of which services both MVACs and MVAC-like appliances. Some automotive recyclers may also receive both MVACs and MVAC-like appliances on their lots and may therefore be recovering refrigerant from both MVACs and MVAC-like appliances before they are dismantled, crushed or otherwise disposed of. Having different rules in place for MVACs and MVAC-like appliances complicates efforts by these persons to comply with EPA regulations.

In addition, EPA believes that a delay in implementing these rules, as they apply to MVAC-like appliances, will be viewed with concern by servicers of MVAC-like appliances found in non-road motor vehicles, such as those appliances in farm and heavy-duty equipment. The farm equipment and heavy-duty equipment industries have long expressed to EPA their frustration at understanding how MVAC-like appliances are governed under Title VI of the Act. EPA believes that publishing the service practice regulations under subpart F, thereby incurring a delay of a year or more in their implementation, would not serve the interest of these industries, and that the service practice regulations promulgated today should clarify to these affected sectors how MVAC-like appliances are regulated under Title VI.

Finally, EPA believes that it makes more sense to state in the subpart B regulations than in the subpart F regulations how these service practice regulations apply to MVAC-like appliances, because in most practical respects, EPA regulations treat MVAC-like appliances more like MVACs than like refrigerators, freezers, chillers and other stationary/commercial appliances. EPA established the links between the provisions governing MVACs and those governing MVAC-like appliances because EPA believed that the

similarities in design and servicing patterns between MVACs and MVAC-like appliances argue for parallel requirements for both sets of appliances. The argument for parallel coverage of MVACs and MVAC-like appliances was discussed at length in the May 14, 1993 section 608 rule at 58 FR 28686. EPA continues to believe this, and specifically believes that the rationale for clarifying and changing the requirements under the section 609 regulations as they apply to MVACs also holds for MVAC-like appliances.

Interested parties should note that the section 608 regulations currently define ''appliances,'' including ''MVAC-like appliances,'' to include only devices that contain and use class I or class II substances, so that as of today, MVAC-like appliances by definition do not include any air-conditioning systems in off-road equipment if those systems use HFC–134a or other non-ozone-depleting substances. Off-road vehicles that contain MVAC-like appliances that use non-ozone-depleting refrigerants are today subject only to the section 608 venting prohibition; other Title VI regulations will only apply to these vehicles when the definition of ''appliance'' is expanded to include devices that use non-ozone-depleting substances as refrigerants. EPA is currently undertaking a rulemaking to expand the scope of the 608 regulation to include substitutes for class I and class II substances, but this rulemaking has not yet been proposed. This rulemaking would amend the definition of ''appliance,'' so that the term includes non-ozone-depleting refrigerants. If and when that expanded definition becomes effective, MVAC-like appliances that contain non-ozone-depleting refrigerants would be subject to the service practice regulations promulgated today.

1. Handling Refrigerant Recovered From Vehicles Bound for Disposal and Located at Motor Vehicle Disposal Facilities

Since the publication of the July 14, 1992 section 609 final rule, EPA has received an increasing number of questions concerning the handling of refrigerants from MVACs and MVAC-like appliances bound for disposal and located at motor vehicle disposal facilities. Many owners of motor vehicle disposal facilities have assumed that recovered refrigerant must be sent off-site for reclamation, while others have assumed that they may sell the refrigerant to any interested purchaser. In response to the increasing cost of CFC–12, some automotive service technicians have begun to recover refrigerant from motor vehicle disposal facilities for use in their own service facilities. In addition, owners and operators of motor vehicle disposal facilities have been recovering refrigerant from automobiles and selling it to automotive service technicians. The rule promulgated today clarifies that the Agency permits the return of refrigerant to the MVAC service sector without prior reclamation, as long as certain requirements are met during their performance.

Sections 608 and 609 of the Clean Air Act and the regulations adopted by EPA prior to today at 40 CFR part 82, Subparts B and F (*i.e.*, the section 609 and 608 regulations) have addressed to some degree activities involving recovery and sale of refrigerant from MVACs and MVAC-like appliances at motor vehicle disposal facilities. Regulations promulgated under Section 608 of the Clean Air Act, which has as one of its goals ensuring the purity of refrigerant that flows back into the stationary/commercial sector, require the recovery of all refrigerant located in appliances destined for disposal. Section 608 regulations also require that unless refrigerant is recovered from an MVAC and reused in the MVAC service sector, it must be reclaimed. However, if refrigerant has been recovered from an MVAC destined for disposal, and if the refrigerant is then reused in the MVAC service sector, the regulations promulgated under section 608 are silent with respect to how that refrigerant must be handled prior to such reuse.

Section 82.154(f) of the regulations requires that persons who take the final step in the disposal process must recover any remaining refrigerant in accordance with applicable requirements and requires that persons who recover refrigerant from MVACs and MVAC-like appliances for purposes of disposal must certify to the Administrator that they have acquired equipment that meets such standards. Section 82.156(g) requires that all persons recovering refrigerant from MVACs and MVAC-like appliances for purposes of disposal must reduce the pressure of the system to or below 102 mm (four inches) of mercury vacuum, using equipment that meets the requirements of § 82.158(l). In addition, § 82.154 (g) and (h) require that persons cannot sell used class I or class II refrigerant unless it has first been reclaimed by a certified reclaimer, or unless the refrigerant was used only in an MVAC or MVAC-like appliance and will be used only in an MVAC or MVAC-like appliance.[1] Section 82.154(m) prohibits persons from selling or distributing any class I or class II substance for use as a refrigerant unless the purchaser is a technician certified under section 608 or 609. (Although there are exceptions to this sales restriction, the exceptions do not apply to sales of refrigerant from motor vehicle disposal facilities.) These provisions were adopted pursuant to section 608 of the Act. Any servicing of an MVAC or MVAC-like appliance with refrigerant recovered from a motor vehicle disposal facility would also be subject to the various equipment standards and use restrictions set forth in 40 CFR part 82, subparts B and F.

Neither the subpart F regulations nor the subpart B regulations, however, explicitly and specifically address, in a single, central location, who may recover refrigerant from motor vehicles bound for disposal, who may purchase such refrigerant, and under what conditions such refrigerant may be re-used. Today's rule is intended to supplement the existing piecemeal requirements so that automotive recyclers and dismantlers, and automotive service technicians, will be able to follow a clear and complete set of EPA regulations concerning the recovery and re-use of refrigerants from MVACs and MVAC-like appliances located at motor vehicle disposal facilities. At the same time, the provisions contained in today's rule should minimize the discharge of ozone-depleting refrigerants into the atmosphere and provide for the proper recycling or reclamation of the refrigerants prior to their use in servicing MVACs or MVAC-like appliances. EPA intends to propose similar regulations under section 608 of the Act to provide an incentive for the recovery and re-use of non-ozone-depleting refrigerants from MVAC-like appliances located at motor vehicle disposal facilities, so that these refrigerants are properly recycled or reclaimed prior to their use in servicing MVACs or MVAC-like appliances.

The Agency believes that recovery and recycling of refrigerant from MVACs bound for disposal and located at disposal facilities will be more economically attractive to the automotive service technician and the motor vehicle disposal facility operator

[1] Sections 82.154 (g) and (h) also permit a third option for used class I and class II refrigerants: They may be sold in an appliance without prior reclamation. Interested parties should note that although § 82.154 (g) and (h) were formerly effective only until December 31, 1996, a final rule published in the **Federal Register** on December 27, 1996 at 61 FR 68506 extends these provisions indefinitely.

if the sale or re-use of unreclaimed refrigerant is explicitly permitted. The service technician may be able to purchase refrigerant for a lower price from a motor vehicle disposal facility than from other suppliers of reclaimed refrigerant. Because of this economic incentive, technicians will seek salvaged MVACs. In addition, motor vehicle disposal facility owners and operators may profit by selling refrigerant directly to technicians, or by charging technicians fees for the opportunity to recover refrigerant at the facility, creating other economic incentives in the refrigerant recycling chain. The Agency believes that encouraging these activities will increase the value of refrigerant to the person recovering it, thereby reducing the amount of refrigerant that either leaks out of MVACs while they await disposal or is purposely vented during the process of disposal.

Today's rule adds a definition of ''motor vehicle disposal facility'' at § 82.32(i) and adds a new § 82.34(d). The effect of these changes is that if refrigerant from MVACs bound for disposal and located at disposal facilities is destined for re-use in the MVAC service sector without prior reclamation, it must be recovered by a certified technician or by a motor vehicle disposal facility owner, operator, or employee. Such persons will be able to transfer the refrigerant off-site for recycling and charging into an MVAC or MVAC-like appliance, in accordance with the conditions described in this rule. Section (a) discusses the definition of motor vehicle disposal facility, section (b) discusses who may recover refrigerant from such a facility, and section (c) discusses what kind of equipment must be used to recover refrigerant at such a facility. Section (d) discusses who may purchase refrigerant recovered from a motor vehicle disposal facility, section (e) discusses subsequent use of refrigerant after it has left the facility, and section (f) discusses recordkeeping and reporting requirements.

After publishing the proposal to today's rule, and reviewing the comments on that proposal, the Agency considered at length where the proposed regulations most sensibly belong: Under subpart F (the regulations previously promulgated under section 608 of the Act), which governs the safe disposal of refrigerants and includes regulations that mandate what type of equipment must be used to recover refrigerant at motor vehicle disposal facilities, or under subpart B (the regulations previously promulgated under section 609 of the Act), which governs the servicing of motor vehicle air conditioning and includes regulations that mandate what type of equipment must be used to recycle refrigerant prior to re-use in a motor vehicle.

EPA believes that if the refrigerant recovered at a motor vehicle disposal facility is destined for re-use in the MVAC service sector without prior reclamation, then the regulations governing the recovery and re-use of that refrigerant should be located in subpart B. With the regulations adopted today, the regulations in subpart B are based in large part on section 609, but contain a few provisions based on section 608. If, on the other hand, the refrigerant recovered at a motor vehicle disposal facility is sold or otherwise transferred to a reclaimer and subsequently re-used in any refrigeration and air-conditioning sector, then the regulations governing the recovery and re-use of that refrigerant are found in subpart F. This regulatory framework will effectively preclude storing refrigerant bound for re-use in the MVAC service sector without prior reclamation together in the same container with refrigerant destined for a reclaimer prior to re-use.

With some exceptions described below (notably recordkeeping requirements), the recovery of refrigerant destined for re-use in the MVAC service sector without prior reclamation is governed by the regulations described in today's rule. All of the regulations that govern the recovery of class I and class II refrigerants bound directly for a reclaimer are already in place, in the current subpart F regulations, and the subpart F regulations will in the future incorporate rules that govern the recovery of non-ozone-depleting refrigerants bound for reclamation. Within each section below, the discussion will be framed around whether the refrigerant is bound for direct re-use in the MVAC service sector, or whether it is bound for reclamation. Each section below will explain which regulatory text under subpart F and/or subpart B applies in each situation.

a. Definition of motor vehicle disposal facility: The proposed rule added a new term, ''motor vehicle disposal facility,'' defined in § 82.32(i). The proposed definition stated that motor vehicle disposal facility means ''any commercial facility that engages in motor vehicle disposal, dismantling or recycling, including but not limited to scrap yards, landfills, and salvage yards engaged in such operations. Motor vehicle repair facilities, including collision repair facilities, are not considered motor vehicle disposal facilities.'' Few commenters suggested changes to the definition. One commenter requested that EPA include in the definition mobile car crushers, vehicle dismantlers, certified scrap processors, and itinerant vehicle collectors, which are businesses separately categorized and registered in New York State. EPA believes that the existing definition is sufficiently broad to encompass these kinds of businesses, and that the types of businesses explicitly listed in the definition need not be exhaustive. A second commenter suggested replacing the term ''salvage yards'' with ''automotive recycling facilities,'' since the commenter believed that ''salvage yard'' does not properly identify the automotive recycling industry. EPA in response has added the term ''automotive recycling facilities,'' but has not deleted the term ''salvage yards,'' since facilities that characterize themselves as salvage yards but not necessarily as automotive recycling facilities may engage in refrigerant recovery.

EPA has also changed the definition to make more clear that facilities that dismantle or dispose of both MVACs and MVAC-like appliances are covered under the definition. It should be noted, however, that the regulations set forth in today's rule concerning handling refrigerant recovered from vehicles bound for disposal do not apply to recovery of refrigerant from an MVAC or MVAC-like appliance that is performed outside of a motor vehicle disposal facility. So, for example, if a piece of heavy-duty equipment such as mining equipment that is at the end of its useful life is dismantled at the mine site, then the mine site is not considered a motor vehicle disposal facility.

b. Persons who may recover refrigerant from MVACs at motor vehicle disposal facilities: Neither the subpart F regulations nor the current subpart B regulations restrict who may recover refrigerant from an MVAC or MVAC-like appliance before it is disposed of or dismantled. This continues to be the case for refrigerant recovered from an MVAC or MVAC-like appliance if the refrigerant is then sold or otherwise transferred to a reclaimer.

If, on the other hand, the refrigerant is bound for re-use in the MVAC (or MVAC-like appliance) service sector without being reclaimed first, then today's rule applies. Specifically, the rule adds a new requirement, set forth in § 82.34(d), that if any refrigerant recovered from an MVAC or MVAC-like appliance at a motor vehicle disposal facility is to be returned to the MVAC

service sector for re-use without prior reclamation, then the person recovering it must be either an owner, operator or employee of the facility (or a contractor to the facility), or a section 609 certified technician.

With respect to class I and class II substances bound for direct re-use in the MVAC or MVAC-like appliance service sector, sections 608 (a) and (b) authorize the restriction on who may recover refrigerant. Under section 608, the Administrator may prescribe standards and equipment regarding the use and disposal of MVACs and MVAC-like appliances containing class I or II substances, in order to reduce the use and emissions of these substances to the lowest achievable level, and to maximize the recapture and recycling of these substances. The Administrator also may establish standards and requirements regarding the safe disposal of these substances.

Although sections 608 (a) and (b) authorize the restriction on who may recover refrigerant from a motor vehicle disposal facility with respect to class I or II substances, these sections do not directly require regulation of the use of non-ozone-depleting substitute refrigerants. Section 608(c)(2), however, does prohibit intentional venting or release of such substitutes during the maintenance, repair, service or disposal of an appliance where the refrigerant may enter the environment, unless the Administrator has determined that such venting, release, or disposal does not pose a threat to the environment. This venting prohibition is self-effectuating, and went into effect on November 15, 1995 with respect to substitutes for class I or class II substances. *De minimis* releases associated with any good faith efforts to recapture and recycle or safely dispose of the refrigerant are not subject to this prohibition as long as those efforts are performed by persons who are authorized under the regulations to recover refrigerant. Releases associated with recovery that does not comply with the regulations, such as releases by persons who are not authorized under the regulations to perform refrigerant recovery, are not considered *de minimis* or accidental but rather intentional and knowing.

In today's rulemaking, EPA is defining the kind of recovery and recycling practices that must be followed in order to avoid violating the section 608 prohibition on knowingly venting substitutes for class I or class II refrigerants. The requirement that only a section 609 certified technician or an owner, operator, or employee of a motor vehicle disposal facility may extract the substitute refrigerant from an MVAC or an MVAC-like appliance at a motor vehicle disposal facility, if the refrigerant is not reclaimed prior to re-use, is a reasonable exercise of this authority. By permitting only these persons to recover non-ozone-depleting refrigerants, EPA is reducing the possibility that these refrigerants will be knowingly vented. Persons who have not been trained in the proper methods of recovering refrigerant from an MVAC or MVAC-like appliance system are more likely to vent refrigerant in the process of extracting it, and are less likely to know how to protect the purity of the refrigerant. Allowing these persons to recover class I and class II refrigerants at motor vehicle disposal facilities would not be consistent with the Agency's mandate to establish requirements that maximize the recapture and recycling of class I and class II refrigerants. Allowing them to recover substitute refrigerants would not be consistent with the section 608(c) venting prohibition.

The Act currently permits owners, operators and employees of motor vehicle disposal facilities to recover refrigerants from MVACs and MVAC-like appliances, even though they may not be certified and therefore trained in the proper handling of the refrigerants. The Agency intends to continue to permit this activity. In reaching this decision, the Agency considered reasons to require these individuals to become certified at this time. EPA believes that requiring owners, operators and employees of motor vehicle disposal facilities to become certified would result in a certain percentage of these persons better understanding the proper means of recovering refrigerant, and that consequently, accidental venting of refrigerant by these persons during the recovery process might decrease. In addition, if EPA required owners, operators and employees of motor vehicle disposal facilities who wish to sell refrigerant directly back into the MVAC service sector without prior reclamation to become certified, individuals who do not wish to become certified would still be able to recover refrigerant as long as it was then sold to a reclaimer.

EPA balanced these arguments against reasons not to require motor vehicle disposal facility owners, operators or employees to become certified at this time. In the past, the Agency has not required these persons to be certified. As stated in the preamble to the May 14, 1993 final rule implementing section 608, ''[b]y not requiring technician certification, the Agency did not intend to imply that anyone could perform these activities without training. Instead, the proposal reflected the fact that recovery of refrigerant is a simpler task than the combination of recovering refrigerant and returning refrigerant (at the appropriate purity level) to equipment. The disposal sector is distinct from the servicing sectors of both section 608 and section 609 in that refrigerant is not returned to equipment. . . . Purchasing refrigerant is also not necessary in the disposal sector, but technician certification is linked to the ability to continue to purchase new refrigerant needed for servicing equipment'' (58 FR 28705).

In addition, EPA does not believe that requiring certification of these individuals at this time will result in a reduction in accidental or intentional venting of refrigerant, or in a reduction in refrigerant contamination rates, significant enough to warrant this new restriction. Motor vehicle disposal facility owners, operators and employees have been required for several years either to verify that refrigerant has been previously recovered from a vehicle entering the facility, or to recover any refrigerant that remains in the vehicle. Many of these individuals have acquired substantial experience recovering refrigerant from vehicles, and some percentage of them have long been using their recovery equipment properly. For these individuals, becoming certified may not affect their refrigerant handling procedure.

Motor vehicle disposal facility owners, operators and employees also have an economic motivation in the absence of a certification requirement to recover CFC–12 refrigerant properly. No matter whether they sell recovered CFC–12 to an MVAC service facility or to a reclaimer, CFC–12 has become increasingly more valuable, and purchasers should be paying increasingly higher prices for uncontaminated CFC–12. EPA believes that this motivation should drive motor vehicle disposal facility owners, operators and employees to use care when recovering refrigerant.

In addition, some owners, operators and employees of motor vehicle disposal facilities have already invested in equipment that they use to recover refrigerant, and may currently have in place contracts to sell the refrigerant extracted from MVACs and/or MVAC-like appliances at the facilities. If the Agency had decided instead to begin to prohibit owners, operators and employees of motor vehicle disposal facilities from recovering refrigerant (so that only certified technicians could recover refrigerant), these persons might be unable to use any equipment they

had already purchased, and might therefore be violating contracts previously entered into.

One commenter stated that requiring owners, operators and employees of motor vehicle disposal facilities to become certified under section 609 would reduce the likelihood of frost forming in equipment in outdoor cold weather recovery operations, freezing the equipment refrigerant lines and inhibiting the recovery of all refrigerant remaining in a vehicle. EPA disagrees. Training specified under section 609 does not require instruction in how to recover refrigerant in cold weather conditions, and requiring motor vehicle disposal facility owners, operators and employees to become certified is no guarantee that better refrigerant recovery in these conditions will ensue.

Many commenters felt that EPA should require owners, operators and employees of motor vehicle disposal facilities to become certified under section 609 to handle refrigerant in order to ''level the playing field'' between the regulatory requirements applicable to them and those applicable to automotive service technicians. As noted before, EPA has never required owners, operators and employees of motor vehicle disposal facilities to be certified. They are not in a position to re-use recovered refrigerant, as are technicians. EPA believes that requiring owners, operators and employees of motor vehicle disposal facilities to become certified would be appropriate where needed, to avoid contamination of the nation's refrigerant supply by refrigerant recovered from motor vehicle disposal facilities. In order to assure that motor vehicle disposal facility owners and operators maximize the recapture of class I and class II refrigerants as required by section 608(a) of the Act, and refrain from venting substitute refrigerants as required by section 608(c) of the Act, the Agency has traditionally relied on a combination of providing the motor vehicle disposal industry with informational guidance and requiring the industry to meet regulatory mandates. Rather than requiring at this time that owners and operators of motor vehicle disposal facilities become certified technicians, the Agency proposes to continue to rely on guidance alerting the industry of the environmental consequences of releasing refrigerant, refrigerant salvage techniques, the importance of not mixing different refrigerants, and the business opportunities related to selling refrigerants to certified reclaimers or section 609 technicians. This, in combination with the other factors described above, is a reasonable approach to controlling such contamination.

It is inevitable that as the proliferation of replacement refrigerants for CFC–12 continues to expand in the marketplace, the refrigerant in some vehicles will be contaminated. Indeed, contamination has always been endemic to MVACs; even when all motor vehicle a/c systems ran on CFC–12, contamination of that refrigerant by air, hydrocarbons, or HCFC–22 occurred. Within the next few years, as the number of refrigerants on the market grows, contamination rates may stay the same, or, as is more likely the case, they may increase. In the future, should increasing contamination rates in MVACs or MVAC-like appliances be traced to refrigerant that has been recovered from motor vehicle disposal facilities and re-used in vehicles without prior reclamation, then EPA will reconsider its reliance on providing informational guidance to motor vehicle disposal facilities, and will consider requiring the industry to meet certification and/or other regulatory requirements. One of the regulatory solutions EPA would consider in that event is to require owners, operators and employees of motor vehicle disposal facilities who wish to continue recovering refrigerant for sale to the MVAC service sector to become certified under section 609 of the Act. The Agency would also consider requiring motor vehicle disposal facilities to send all recovered refrigerant to reclaimers, thereby disallowing any sales directly back into the MVAC/MVAC-like appliance service sector.

One commenter suggested that as drafted, the proposed new language of section 82.34(d) might not permit persons who contract with state- or county-owned landfills to recover refrigerant from MVACs at those facilities and subsequently sell them to section 609 technicians. Excluding contractors from this activity was not the intention of the proposal and the Agency has consequently modified the regulatory text to include contractors. EPA considers contractors who generally manage the operations of a government-owned landfill to be operators of that facility; persons who enter the landfill solely to recover refrigerant are not considered operators or other agents of the facility owner and must therefore be certified under section 609 of the Act if they then choose to return the refrigerant to the MVAC/MVAC-like appliance service sector without prior reclamation.

The proposed rule would have permitted technicians certified under section 608 of the Act to recover refrigerant at a motor vehicle disposal facility and resell it into the MVAC/MVAC-like appliance service sector for re-use without prior reclamation. This final rule prohibits this activity by section 608 technicians, so that only section 609 technicians, and owners, operators, and employees of these facilities may recover refrigerant from MVACs or from MVAC-like appliances at disposal facilities, if that refrigerant is re-used without being reclaimed. Generally, technicians certified only under section 608 are prohibited from servicing MVAC systems because MVAC systems are designed differently than stationary and commercial a/c systems. As stated earlier, persons who have not been trained in the proper methods of recovering refrigerant from an MVAC system, even if they are section 608 technicians, are more likely to vent refrigerant in the process of extracting it, and are less likely to know how to protect the purity of the refrigerant. Allowing these persons to recover class I and class II refrigerants at motor vehicle disposal facilities would therefore not be consistent with the Agency's mandate to establish requirements that maximize the recapture and recycling of class I and class II refrigerants, and allowing them to recover substitute refrigerants would not be consistent with the section 608(c) venting prohibition.

Although EPA recognizes that persons certified under section 608 as Type II technicians may handle MVAC-like appliances, today's rule does not permit Type II technicians to recover refrigerant from MVAC-like appliances at motor vehicle disposal facilities. Type II technicians service many types of high pressure and very high pressure appliances used in the stationary/commercial sector. The Agency believes that allowing Type II technicians to recover refrigerant from MVAC-like appliances will increase the possibility that high- and very high-pressure appliances in this sector may be recharged with used, unreclaimed refrigerant recovered from motor vehicle disposal facilities. These appliances, like all appliances in the stationary/commercial sector, are specifically designed to handle only virgin or reclaimed refrigerant. Use of unreclaimed refrigerant from motor vehicle disposal facilities that may contain high levels of oil, air and moisture may result in system deficiencies or failures.

c. Equipment that may be used to recover refrigerant from MVACs at motor vehicle disposal facilities: Section 82.158(l) of the subpart F regulations states that equipment used to evacuate

refrigerant from an MVAC or MVAC-like appliance prior to its disposal must be capable of reducing the system pressure to 102 mm (4 inches) of mercury vacuum. If the refrigerant is transferred to a reclaimer after recovery, this remains the only restriction on what kind of equipment may be used to recover refrigerant from an MVAC or MVAC-like appliance.

If, on the other hand, the recovered refrigerant is bound for re-use in the MVAC or MVAC-like appliance service sector without being reclaimed first, then the provisions set forth in today's rule apply. Specifically, the rule adds a new requirement, set forth in section 82.34(d), that any refrigerant extracted from an MVAC or an MVAC-like appliance located at a motor vehicle disposal facility and that is bound for re-use in the MVAC/MVAC-like appliance service sector without first undergoing reclamation must be recovered using approved refrigerant recycling equipment (*i.e.*, section 609 equipment) dedicated for use with MVACs and MVAC-like appliances.

This requirement departs from the proposed regulatory text, which would have permitted persons recovering refrigerant at motor vehicle disposal facilities for re-use in the MVAC/MVAC-like appliance service sector to continue to use not only equipment approved under section 609, but also any other equipment capable of reducing system pressure to or below 102 mm of mercury vacuum. EPA is promulgating this change to the proposed regulation because it will serve to reduce the risk of disposal facilities serving as the source of contaminated refrigerant supplies, because of the high level of support among the commenters for this change in the regulations, and because this new requirement will not create economic hardships for motor vehicle disposal facilities.

The Agency believes that without this more stringent equipment standard, persons recovering refrigerant at facilities who dismantle both refrigerators, residential air conditioners and other section 608 appliances, and motor vehicles, may engage in the practice of using the same equipment to recover refrigerant from a motor vehicle bound for disposal and to recover from section 608 appliances refrigerant that is high in acid levels due to compressor burn-out (and perhaps mixing that refrigerant with refrigerant recovered from MVACs and MVAC-like appliances). Sources such as residential air conditioners and refrigerators are much more likely to have ceased operation because of compressor burn-out. The refrigerant might then be sold to a section 609 certified technician for use in an MVAC or MVAC-like appliance. Any efforts by the technician to identify the refrigerant would not show that the refrigerant was contaminated by these acids. Recycling equipment available to motor vehicle service establishments removes only moisture, oil and noncondensable gas (air) from the refrigerant, and is not capable of removing acids.

EPA believes that allowing motor vehicle disposal facilities to use equipment approved under section 608 will not provide adequate safeguards against the risk of contaminated refrigerant. Section 608 equipment is specifically designed for use with refrigerant that later gets reclaimed, rather than merely recycled and then re-used. Some section 608 equipment is designed to be used to recover multiple refrigerants using common circuitry. Residues from recovering one refrigerant may contaminate a second recovered refrigerant; but again, such contamination is of little consequence because the refrigerant mixture is then reclaimed. However, if section 608 equipment were to be used to recover refrigerant that is then sold to an automotive facility for use in the MVAC/MVAC-like appliance service sector without prior reclamation, it is likely that automotive air-conditioning systems would become contaminated with refrigerant that, although it has been recycled by the facility using approved section 609 equipment, contains residues of acids and/or other refrigerants. In EPA's view, this possibility poses an unacceptable risk of contamination, both to the automotive facility's recycling equipment and to the MVAC systems in its customers' vehicles.

In the proposed rule, EPA requested comment as to whether the existing requirement of allowing refrigerant recovery using any equipment that can achieve a 102 mm mercury vacuum should be modified. EPA specifically requested comment on whether EPA should require that persons recovering refrigerant must instead use only equipment that meets the definition of ''approved refrigerant recycling equipment'' set forth in § 82.32(b) (*i.e.*, equipment approved under section 609). Many commenters to the rule supported this change. No commenters opposed this specific change, although one commenter stated that ''EPA should protect the investment [that] companies made in equipment that met appropriate standards when purchased, or that cannot be deemed ''substantially identical'' under current standards.'' The Agency believes that this change does not affect that investment, because owners of equipment that is not approved under section 609 but can achieve a 102 mm mercury vacuum may still use their equipment to recover refrigerant, which is then sent to a reclaimer.

One commenter noted that given that the purpose of section 609 of the Act is to prevent refrigerant venting, encourage the proper recovery and recycling of refrigerants, and maintain the purity of the existing refrigerant supply, the Agency is obligated to establish a level playing field between motor vehicle disposal facilities and automotive service facilities by requiring that refrigerant handlers in disposal facilities meet similar standards to refrigerant handlers in service facilities. EPA does not believe that motor vehicle disposal facilities handling refrigerant and automotive service facilities handling refrigerant should necessarily be subject to the same regulatory requirements because the circumstances are not the same. However, EPA believes that the requirement to use section 609 equipment to recover any refrigerant that has been extracted from an MVAC or an MVAC-like appliance located at a motor vehicle disposal facility, and is bound for re-use in the MVAC/MVAC-like appliance service sector without prior reclamation, properly reflects similar treatment for similar circumstances, without creating economic hardships for motor vehicle disposal facilities.

Under this regulatory framework, motor vehicle disposal facilities do not necessarily have to purchase section 609 approved refrigerant recycling equipment. If they choose to use equipment that does not meet the requirements of section 609 (but is still capable of achieving a 102 mm vacuum, as the section 608 regulations require) to recover refrigerant, they may then transport the refrigerant to a reclaimer. Alternatively, they may bring a technician certified under section 609, who operates approved refrigerant recycling equipment, on-site to recover the refrigerant before it gets recycled and re-used in the MVAC/MVAC-like appliance service sector.

Within the next few years, more and more vehicles will enter disposal facilities with some HFC–134a left in the system. In addition, as the nation's supplies of CFC–12 diminish, increasing numbers of owners of older vehicles will replace the CFC–12 in their vehicles with HFC–134a or with blend refrigerants that enter the marketplace. If disposal facilities wish to sell the refrigerant to an MVAC service facility

without prior reclamation, then refrigerant must be recovered into section 609-approved equipment designed for use with that particular refrigerant. Facilities daunted at the thought of purchasing multiple pieces of equipment may of course contract with a technician certified under section 609 to bring his pieces of equipment to the facility, or they may recover multiple refrigerants into one piece of equipment designed under the section 608 program for such use (taking care to recover the refrigerants into separate containers), and send the refrigerant to a reclaimer.

d. Persons who may purchase refrigerant recovered from a motor vehicle disposal facility:. Today's rule places certain restrictions on who may purchase refrigerant recovered from a motor vehicle disposal facility if that refrigerant is bound for re-use in the MVAC/MVAC-like appliance service sector without prior reclamation. Specifically, section 82.34(d) states that any sale of a class I or class II substance extracted from an MVAC or an MVAC-like appliance at a motor vehicle disposal facility that is not reclaimed, must be to a technician certified under section 609.

For class I and II substances recovered from MVACs and MVAC-like appliances, sections 608 and 609 authorize the sales restriction. While section 609 is limited to restricting the sale of class I or II substances in small containers for use in MVACs, section 608 authorizes a broader sales restriction. The sales restriction provision promulgated today for inclusion in 82.34(d) basically repeats the sales restrictions previously promulgated at 82.34(b) and 82.154(m). Today's rule makes clear that the restriction applies with respect to class I or II substances recovered from MVACs or from MVAC-like appliances during the disposal process.

The current sales restriction in section 609(e) does not extend to non-ozone-depleting substitute refrigerants at this time. EPA is currently developing a proposal addressing the use of substitutes under section 608, and is considering extending the sales restriction to such substitutes. EPA will address the sale of such substitutes recovered from MVACs and MVAC-like appliances during the disposal process in that proposed rulemaking.

Several commenters urged EPA to require that all refrigerant recovered at motor vehicle disposal facilities be sent directly to a reclaimer. These commenters believe that the current use and future proliferation of refrigerants already has and will inevitably result in much contamination. EPA recognizes that although motor vehicle air conditioning has long been dominated by CFC–12, automotive manufacturers now install HFC–134a in new car systems, while some refrigerant manufacturers are attempting to establish large markets for other CFC–12 substitutes in vehicles. This proliferation of refrigerants in the section 609 sector increases the chances of contamination in individual systems. Contaminated refrigerant supplies may create MVAC system failures as well as failures of refrigerant recover/recycle equipment, leading to emissions of refrigerants and to increased costs for both service facilities and motor vehicle owners. In addition, contaminated refrigerant may be extremely difficult to recycle, reclaim, or dispose of, so that it is likely to be vented into the atmosphere. As noted above, in the future, should increased contamination rates in MVACs or MVAC-like appliances be traced to refrigerant recovered from motor vehicle disposal facilities and re-used in vehicles without prior reclamation, EPA may revise its regulations pertaining to motor vehicle disposal facilities and require that all refrigerant recovered from such facilities be sent to reclaimers. For now, however, instituting such a requirement would defeat a major purpose of today's rule: To increase the value of refrigerant recovered from motor vehicle disposal facilities, thereby reducing the amount of refrigerant that either leaks out of MVACs while they await disposal or is purposely vented during the process of disposal.

Commenters cited several other related reasons to require that all refrigerant recovered at motor vehicle disposal facilities be sent directly to a reclaimer. One commenter suggested that any sales of refrigerant should be allowed only when the seller can demonstrate that the refrigerant meets new product standards. This requirement would limit refrigerant sales to wholesalers and retailers who own stocks of virgin refrigerant, and to reclaimers, who have reclaimed the refrigerant to ARI 700 standards (*i.e.*, new product standards). Again, this requirement would defeat the intent of today's rule to encourage new markets for valuable refrigerants.

Another commenter noted (and EPA agrees) that any refrigerant that is not reclaimed must be recycled in accordance with EPA standards, which are in turn based on SAE standards. The commenter went on to state that the SAE standards govern refrigerant that has been directly removed from, and will be directly re-used in, MVACs only, and that equipment that meets the SAE standards was not designed for use with refrigerants contaminated with each other. EPA agrees with the commenter that recovery/recycling equipment was generally designed for use with single, specific refrigerants, and that running highly contaminated refrigerant through such equipment not only may damage the equipment but will certainly not clean the refrigerant of any impurities other than oil, air and moisture.

EPA recognizes that even the use of proper recovery procedures at a motor vehicle disposal facility does not guarantee refrigerant purity. Certain vehicles will enter the disposal facility with ''mystery'' refrigerants in their a/c systems, or with identifiable, but highly contaminated, refrigerants. These incidences are most likely to increase in the future. As one commenter stated: ''Soon, owners of older vehicles with CFC–12 systems requiring major repair will elect to retrofit their systems to other refrigerants. When CFC–12 is no longer available, the consumer with a CFC–12 system will be forced to retrofit to an alternative refrigerant, buy a new car or give up the comfort of an air conditioned car. As more alternate refrigerants come to market and time passes, the grave-yards for older vehicles will be littered with vehicles having a wide variety of refrigerants in their A/C systems. Some of these systems will contain contaminated refrigerant.''

Regulations promulgated under section 612 of the Act require that MVACs and MVAC-like appliances using any replacement refrigerants for CFC–12 are required by EPA to have unique fittings and a label stating the type of refrigerant used in the air-conditioning system. This regulatory requirement should serve to deter increases in the rate at which systems become contaminated, before they reach motor vehicle disposal facilities. At this time, EPA does not possess significant data that describe rates of contamination in vehicles, sources of contamination, and kinds of contaminants. If the Agency obtains this type of data in the future, it may consider taking additional steps to minimize contamination.

Recovering the refrigerant himself is one way a section 609 certified technician can guarantee that the refrigerant at the disposal facility has been properly recovered. He may purchase the refrigerant from a motor vehicle disposal facility that he knows uses proper refrigerant recovery procedures. Neither of these actions, however, protects him against purchasing or using refrigerant that becomes contaminated before it arrives at the motor vehicle disposal facility. In

order to guard against that event, he may also enter into a written contract with the disposal facility in which the facility agrees to sell him only refrigerant that meets certain purity requirements.

Similarly, neither requiring motor vehicle disposal facilities to use equipment approved under section 609 of the Act, nor requiring purchasers of refrigerant recovered from those facilities to recycle the refrigerant prior to charging it into another vehicle, will absolutely protect the vehicle owner from having contaminated refrigerant charged into his car. To ensure the purity of the refrigerant, the technician may run it through a refrigerant identifier prior to purchasing the refrigerant (as was strongly recommended in the preamble to the proposed rule). In addition, motor vehicle disposal facilities may wish to purchase these identifiers as a way to check the purity of the refrigerant sold to automotive service technicians, in order to better ensure their customers' satisfaction. However, not all portable refrigerant identifier equipment is currently sophisticated enough to identify all of the refrigerants in commerce today, including blend refrigerants, and all potential contaminants. A requirement to purchase any identifier on the market will therefore not ensure the ultimate protection of the vehicle owner from having contaminated refrigerant charged into his car.

In the July 14, 1992 final rule, EPA stated in the preamble language that ''it is unlikely that persons in the business to service motor vehicle air conditioners would knowingly use contaminated refrigerant since they have an interest in satisfying customers and not injuring the customer's air conditioner'' (57 FR 31248). While the Agency is fully aware that some automotive service technicians may knowingly charge their customers' vehicles with refrigerant that they know to be contaminated, EPA is not convinced, as it was not in 1992, that a majority, or even a large number, of service technicians will choose to engage in such unscrupulous behavior. Knowingly charging vehicles with contaminated refrigerant jeopardizes the performance of both a technician's charging equipment and his customer's vehicle's a/c system. Should the system fail due to the contamination (knowing or unknowing), the customer may return, unhappy, perceiving that the technician has failed to fix the initial system problem, or that the technician has worsened the initial problem.

EPA believes that if automotive service technicians have any doubt or question about the purity of refrigerant they have purchased from a motor vehicle disposal facility, they will test the refrigerant using refrigerant identifier equipment prior to recycling it in their refrigerant recycling equipment or prior to installing it in a customer's vehicle. If a section 609 technician is unsure about the purity of the refrigerant he may obtain from a local disposal facility, and is fearful about damaging both his recover/recycle equipment and his reputation with his customers, he always has another solution: he may forego purchasing from the facility, and instead purchase virgin refrigerant from his parts supplier, or reclaimed refrigerant from a reclaimer. As one commenter, a trade association representing automotive service facilities, stated, ''it is precisely the mixing of different refrigerants and the possibility of contamination which would preclude many of our members from considering disposal facilities as a source for recovered refrigerant.''

e. Subsequent use of recovered refrigerant. Today's rule also places certain restrictions on the use and handling of refrigerant recovered from a motor vehicle disposal facility if that refrigerant is not transferred to a reclaimer after recovery, but instead is bound for re-use in the MVAC/MVAC-like appliance service sector without prior reclamation. Specifically, section 82.34(d) requires that certified technicians process refrigerant recovered from a motor vehicle disposal facility through section 609 approved refrigerant recycling equipment before it may be used to charge or recharge another MVAC or MVAC-like appliance. Section 609 authorizes this restriction with respect to MVACs, both for class I and class II substances as well as substitutes. Refrigerant recovery at motor vehicle disposal facilities occurs in an environment where moisture and air easily get into hoses and cylinders. Requiring recycling of the refrigerant prior to charging it into another vehicle will ensure than any excess moisture or air in the refrigerant is reduced to acceptably low levels. Section 608(a) authorizes this restriction with respect to MVAC-like appliances.

A certified technician purchasing or accepting refrigerant from MVACs or MVAC-like appliances bound for disposal and located at a motor vehicle disposal facility is responsible to assure that the refrigerant is recycled properly prior to being charged into another MVAC or MVAC-like appliance and assurances from the disposal facility regarding recycling do not remove this responsibility.

Today's rule also provides that if refrigerant recovered from a motor vehicle disposal facility is to be recycled in section 609 approved refrigerant recycling equipment rather than reclaimed prior to re-use, the refrigerant may subsequently be charged only into an MVAC or an MVAC-like appliance. Several commenters expressed concern that once a technician certified under section 609 had purchased refrigerant from a motor vehicle disposal facility, he could then sell it to a technician certified under section 608 for use in the stationary/commercial sector, or, if the section 609 technician were also certified under section 608, he himself could use the refrigerant in the stationary/commercial sector. Sections 82.154 (g) and (h) prohibit the re-use of refrigerant recovered from an MVAC or MVAC-like appliance without prior reclamation unless it is returned to an MVAC or MVAC-like appliance. However, some commenters believe that this prohibition, contained as it is in subpart F, the section 608 regulations, will not give automotive service technicians sufficient notice that the sale of refrigerant by a section 609 technician to a section 608 technician is prohibited. EPA is therefore amending the proposed language under § 82.34(d) to add a sentence that states that technicians certified under section 609 who purchase a class I or class II substance recovered at such facilities must subsequently re-use the refrigerant in an MVAC or MVAC-like appliance. This new provision, essentially a reiteration of the current requirements set forth in § 82.154 (g) and (h), implements EPA's mandate under section 608 to prescribe standards and equipment regarding the use and disposal of class I or II substances, in order to reduce the use and emissions of these substances to the lowest achievable level, and to maximize the recapture and recycling of these substances. Specifically, section 608(a) requires EPA to promulgate regulations regarding use and disposal of class I and II substances that ''reduce the use and emission of such substances to the lowest achievable level'' and ''maximize the recapture and recycling of such substances.'' Section 608(a) further provides that ''[s]uch regulations may include requirements to use alternative substances (including substances which are not class I or class II substances) * * * or to promote the use of safe alternatives pursuant to section 612 or any combination of the foregoing.'' Improper handling of substitute substances is likely to produce contamination (and therefore reduction

in recycling) and release of class I and class II substances.

f. Recordkeeping and reporting: Today's rule does not require any additional recordkeeping relating to refrigerant recovered from MVACs or MVAC-like appliances prior to disposal. Requiring disposal facilities to track refrigerant, and to demonstrate how the refrigerant in each MVAC or MVAC-like appliance was handled prior to the disposal of the vehicle, would inhibit the activity EPA is encouraging in today's rule. Further, a recordkeeping requirement would add an undue administrative burden to industry because of the large number of vehicles disposed of annually, and would provide little measurable benefit to the environment.

Persons who recover refrigerant at motor vehicle disposal facilities for re-use in the MVAC/MVAC-like appliance service sector without prior reclamation are not exempted from any applicable recordkeeping and reporting requirements set forth under the section 608 regulations. Section 82.166(a) requires all persons who sell or distribute any class I or class II substance for use as a refrigerant to retain invoices that indicate the name of the purchaser, the date of sale, and the quantity of refrigerant purchased. Section 82.166(i) requires all persons disposing of MVACs and MVAC-like appliances to maintain copies of signed statements obtained under § 82.156(f)(2), which in turn requires persons who take the final step in the disposal process of MVACs or MVAC-like appliances, if they have not recovered any remaining refrigerant themselves, to verify that the refrigerant has been evacuated previously. This verification must include a signed statement from the person from whom the MVAC or MVAC-like appliance is obtained that all refrigerant that had not leaked previously has been recovered in accordance with EPA regulations. The statement must include either the name of the person who recovered the refrigerant and the date that the refrigerant was recovered, or a copy of an ongoing contract that requires that the refrigerant deliverer ensure that the refrigerant is removed prior to delivery.

Comments on the recordkeeping/reporting requirements generally urged enforcement of the existing requirements, or suggested that EPA require the type of recordkeeping already required under § 82.166(a) (evidently some commenters were not aware of this requirement).

2. Mobile Recovery and Recycling

Today's rulemaking explicitly permits the mobile servicing of MVACs and MVAC-like appliances. Allowing mobile service performed by certified technicians using approved equipment encourages proper use of the equipment and discourages venting of refrigerant. This policy also increases the flexibility of industry to choose the mode of compliance by allowing businesses that do not specialize in MVAC/MVAC-like appliance service to contract their MVAC/MVAC-like appliance services that involve refrigerant to a section 609 certified technician. The definition of ''properly using'' set forth in 40 CFR 82.32(e) is consequently amended to explicitly permit this activity. An MVAC service facility engaging or contracting with a technician providing the mobile service (or with the facility employing him) is responsible to ensure that the technician actually performing the service is properly certified. This provision applies to servicing both CFC–12 systems and systems that use any substitutes for CFC–12, in both MVACs and MVAC-like appliances.

Comments to the proposal to explicitly permit mobile recovery and recycling were strongly supportive. One typical commenter remarked that ''we are in favor of this proposed change, as many of our customers * * * are unable to transport their equipment to a servicing location due to the size and D.O.T. transport weight limitations. Also, very few of these companies perform their own air-conditioning service due to economic cost involved in this service.'' The commenter concluded that this change in the regulations would enhance its relationships with its customers, since the commenter could service air-conditioning systems at its customers' job sites.

The Agency requested, but did not receive, comments with respect to whether an MVAC service facility, engaging or contracting with a technician who offers mobile service (or with the facility employing him), should be responsible to ensure that the technician is using section 609 approved refrigerant recycling equipment. EPA believes that using the proper equipment should be the responsibility of the technician offering the mobile service (and the facility employing him), rather than of the facility engaging his services.

The amendatory language does not permit the mobile recovery of refrigerant from appliances governed under section 608 of the Act, such as home refrigerators and air conditioners. Contaminants such as acid that are not found in MVACs or MVAC-like appliances are commonly found in these appliances, and any recover/recycle equipment designed for automotive use exposed to refrigerant contaminated with acid could be severely damaged. Regulations promulgated under section 608 of the Act address required practices for recovering refrigerant from stationary equipment.

These changes to the subpart B regulations implementing section 609 will also affect MVAC-like appliances. Section 82.156(a)(5) requires that persons opening MVAC-like appliances for service or repair may do so only while properly using, as defined in § 82.32(e), recovery or recycling equipment. Since the Agency is today amending section 82.32(e), those changes will automatically apply to MVAC-like appliances.

One commenter stated that EPA should consider adding a recordkeeping requirement to document the relationship between the facility that owns the equipment used in the mobile recovery and recycling service and the facility receiving the service. The commenter suggested that this requirement would help inspectors verify the recycling of refrigerant. The Agency is not requiring that such recordkeeping be performed, due to the additional burden it would place on small entities. However, EPA expects that any facilities that receive mobile recovery/recycling service should be able to inform the Agency, when requested, who they have engaged or contracted to perform the mobile service. If they cannot so inform the Agency, and if they do not possess any recovery or recycling equipment, the Agency will presume that those facilities have vented refrigerant from any air-conditioning systems they have serviced.

3. Topping Off

The subpart B regulations implementing section 609 state that any facility performing service involving refrigerant must purchase approved refrigerant recycling equipment. ''Service involving refrigerant'' is defined as ''any service during which discharge or release of refrigerant from the motor vehicle air conditioner to the atmosphere can reasonably be expected to occur'' (40 CFR 82.32(h)). The preamble to the final 1992 section 609 rule stated that MVAC servicing includes ''repairs, leak testing, and ''topping off'' of air-conditioning systems low on refrigerant, as well as any other repair which requires some dismantling of the air conditioner. Each

of these operations involves a reasonable risk of releasing refrigerant to the atmosphere'' (57 FR 31246). Despite the clarity of this statement, some affected stakeholders remain unsure whether quick-lubes and other facilities which may perform top-offs but no other service involving refrigerant are required to purchase recovery/recycling equipment approved under section 609. One commenter to the proposal for today's rule asked that the regulations governing these facilities be made more clear. Consequently, the definitions of ''properly using'' and ''service involving refrigerant'' are being expanded today to further clarify that ''service involving refrigerant'' includes topping off, and that facilities that perform top-offs but no other refrigerant servicing or repair are still considered to be engaged in ''service involving refrigerant'' and must purchase approved recovery/recycling equipment.

These changes to the section 609 rule will not affect MVAC-like appliances. Although § 82.156(a)(5) requires that persons opening MVAC-like appliances for service or repair may do so only while properly using, as defined in section 82.32(e), recovery or recycling equipment, under the subpart F regulations, connecting and disconnecting hoses to an appliance to add refrigerant is not considered ''opening'' the appliance.

4. Recharging Refrigerant Into the Same Vehicle From Which the Refrigerant Was Extracted

The subpart B regulations implementing section 609 state that any facility performing service involving refrigerant must properly use approved refrigerant recycling equipment. The current definition of ''properly using'' states in part that ''[f]or equipment that extracts and recycles refrigerant, properly using also means to recycle refrigerant before it is returned to a motor vehicle air conditioner'' (40 CFR 82.32(e)(1)).[2] Despite the clarity of this statement, some affected stakeholders remain unsure whether refrigerant must be recycled prior to being returned to the same vehicle from which it has been extracted. One commenter to the proposal for today's rule asked that the regulations governing service practices involving refrigerant that is returned to the same vehicle it came from be made more clear. Consequently, this sentence in the definition of ''properly using'' is being expanded today to further clarify that when any automotive refrigerant—whether CFC–12, HFC–134a, or a blend listed as acceptable under EPA's SNAP program—is recovered from an MVAC, it must be recycled in accordance with EPA standards prior to being returned to that MVAC. This change to the section 609 rule will also affect MVAC-like appliances. Section 82.156(a)(5) requires that persons opening MVAC-like appliances for service or repair may do so only while properly using, as defined in § 82.32(e), recovery or recycling equipment. Since the Agency is today amending § 82.32(e), this change will automatically apply to MVAC-like appliances.

B. Equipment Standards.

Section 609(b)(1) of the Act states that effective November 15, 1995, the term ''refrigerant,'' as defined in section 609, shall also include any substance that substitutes for a class I or class II refrigerant used in an MVAC. Section 609(b)(2)(A) specifies that the Administrator shall establish standards for approved refrigerant recycling equipment. Section 82.36(a) of the regulations specifies that equipment that recovers and recycles CFC–12 refrigerant must meet the standards set forth in appendix A to the section 609 regulations, and that equipment that recovers but does not recycle CFC–12 refrigerant must meet the standards set forth in appendix B to the regulations. Today's rulemaking provides that equipment that recovers and recycles HFC–134a must meet the standards set forth in appendix C, that equipment that recovers but does not recycle HFC–134a must meet the standards set forth in appendix D, that equipment that recycles both CFC–12 and HFC–134a using common circuitry must meet the standards set forth in appendix E, and that equipment that recovers but does not recycle a single, specific replacement refrigerant other than HFC–134a must meet the standards set forth in appendix F.

These new equipment standards also apply to the servicing of MVAC-like appliances. Section 82.156(a)(5) requires that persons opening MVAC-like appliances for service or repair may do so only while properly using, as defined in § 82.32(e), recovery or recycling equipment. Since the Agency is today amending § 82.32(e), the definition of ''properly using,'' to reference the equipment standards set forth in today's rule, the equipment standards will apply to MVAC-like appliances.

All of the standards are appropriate for recovery and recycling because they achieve environmental protection through efficient recovery and recycling

[2] Interested parties should note that the May 2, 1995 **Federal Register** (60 FR 21682) inadvertently omitted this sentence, as well as certain other language contained in § 82.32(e). This mistake was carried over into the Code of Federal Regulations (CFR) revised as of July 1, 1995, as well as into the July 1, 1996 revision of the CFR. A correction notice was not issued until January 16, 1997 at 62 FR 2310. These omissions have created significant confusion among affected stakeholders as to the exact text of § 82.32(e), the definition of properly using. The July 1, 1997 version of the CFR should include the corrections, but will not include the revisions promulgated today. With these revisions, the full text of § 82.32(e) should appear in the July 1, 1998 version of the CFR as follows (new text is marked in italics):

(e) Properly using. (1) Properly using means using equipment in conformity with the regulations set forth in this subpart, including but not limited to the prohibitions and required practices set forth in § 82.34, and the recommended service procedures and practices for the containment of refrigerant set forth in appendices A, B, C, D, E, and F of this subpart, as applicable. In addition, this term includes operating the equipment in accordance with the manufacturer's guide to operation and maintenance and using the equipment only for the controlled substance for which the machine is designed. For equipment that extracts and recycles refrigerant, properly using also means to recycle refrigerant before it is returned to a motor vehicle air conditioner or MVAC-like appliance, including to the motor vehicle air conditioner or MVAC-like appliance from which the refrigerant was extracted. For equipment that only recovers refrigerant, properly using includes the requirement to recycle the refrigerant on-site or send the refrigerant off-site for reclamation.

(2) Refrigerant from reclamation facilities that is used for the purpose of recharging motor vehicle air conditioners must be at or above the standard of purity developed by the Air-Conditioning and Refrigeration Institute (ARI 700–93) (which is codified at 40 CFR part 82, subpart F, appendix A, and is available at 4301 North Fairfax Drive, Suite 425, Arlington, Virginia 22203). Refrigerant may be recycled off-site only if the refrigerant is extracted using recover-only equipment, and is subsequently recycled off-site by equipment owned by the person that owns both the recover-only equipment and owns or operates the establishment at which the refrigerant was extracted. In any event, approved equipment must be used to extract refrigerant prior to performing any service during which discharge of refrigerant from the motor vehicle air conditioner can reasonably be expected. Intentionally venting or disposing of refrigerant to the atmosphere is an improper use of equipment.

(3) Notwithstanding any other terms of this paragraph (e), approved refrigerant recycling equipment may be transported off-site and used to perform service involving refrigerant at other locations where such servicing occurs. Any such servicing involving refrigerant must meet all of the requirements of this subpart B that would apply if the servicing occurred on-site.

(4) Facilities that charge MVACs or MVAC-like appliances with refrigerant but do not perform any other service involving refrigerant (*i.e.,* perform ''top-offs'' only) are considered to be engaged in ''service involving refrigerant'' and are subject to any and all requirements of this subsection that apply to facilities that perform a wider range of refrigerant servicing. For facilities that charge MVACs, this includes the requirement to purchase approved refrigerant recycling equipment. For facilities that only charge MVAC-like appliances, this does not include the requirement to purchase approved refrigerant recycling equipment, but does include the requirement to be properly trained and certified by a technician certification program approved by the Administrator pursuant to either § 82.40 or § 82.161(a)(5).

(5)All persons opening (as that term is defined in § 82.152) MVAC-like appliances must have at least one piece of approved recovery or recycling equipment available at their place of business.

of refrigerant, and protect automobile equipment through minimum refrigerant purity standards and service procedure standards. The appendix C standards are based on SAE J2099 (Standard of Purity for Recycled HFC–134a), SAE J2211 (Recommended Service Procedure for the Containment of HFC–134a), and SAE J2210 (Standard for HFC–134a Recycling Equipment); the appendix D standards are based on SAE J2211 (set forth in appendix C) and SAE J1732 (HFC–134a Extraction Equipment for Mobile Air Conditioning Systems); and the appendix E standards are based on SAE J2211 (set forth in appendix C), SAE J1989 (set forth in appendix A), and SAE J1770 (Standard for Recycling Equipment Intended for Use with Both CFC–12 and HFC–134a). The standards adopted today as appendices C, D and E represent a consensus of the Interior Climate Control Committee of SAE. This committee is made up of automotive industry experts, equipment and supply manufacturers, and chemical producers. SAE prepared the standards for the recycling of CFC–12 (SAE J1989, 1990, and J1991) later adopted by EPA in appendix A, and for the recovery of CFC–12 (SAE J1989 and J2209) later adopted by the Agency in appendix B, and the Agency believes that the standards set forth for the recovery and recycling of HFC–134a in today's rulemaking as appendices C, D and E are consistent with the specifications required in those standards for CFC–12.

Appendix F, Standard for Recover-Only Equipment that Extracts a Single, Specific Refrigerant other than CFC–12 or HFC–134a, is based on SAE J1732 (HFC–134a Extraction Equipment for Mobile Air Conditioning Systems, contained in appendix D). Since SAE has not developed formal standards for the recovery of most refrigerants listed as acceptable under EPA's Significant New Alternative Policy (SNAP) program other than HFC–134a and is not likely to do so in the future, the Agency developed in cooperation with SAE and other industry representatives a standard for recover-only equipment designed to extract these new refrigerants. The Agency also believes that the standard adopted today as appendix F for the recovery of replacement refrigerants other than HFC–134a, is consistent with the specifications required in those standards for CFC–12.

The standards adopted today contain specifications for labeling equipment once it is certified; safety requirements; requirements that the equipment manufacturer must provide operating instructions; and functional descriptions of the equipment, including hose and fitting specifications, overfill protection requirements and additional storage tank requirements. The standards require that the container for used refrigerant be gray with a yellow top and be marked in black print ''DIRTY REFRIGERANT—DO NOT USE, MUST BE REPROCESSED.'' The standards state that the equipment must be able to separate lubricant from recovered refrigerant and to indicate accurately the amount removed from the air-conditioning system in order to assure that the proper amount of lubricant can be returned to the system.

The Act states that standards developed by the Administrator shall, at a minimum, be as stringent as SAE J1989 in effect as of the date of November 15, 1990. The standards proposed today are equally as stringent as SAE J1989 regarding the procedure for extracting refrigerant and separating lubricant from refrigerant. They offer further specifications on extraction efficiency (referring to 102 mm of mercury versus the more general statement regarding removal ''to a vacuum''). Procedures and requirements regarding unintentional releases of refrigerant during the extraction process are equivalent to SAE J1989.

Comments to the adoption of the standards set forth in appendices C, D, E and F were generally minimal and supported the establishment of the standards. One commenter noted that the proposed standard in appendix F for equipment designed to recover, but not recycle, replacement refrigerants other than HFC–134a does not provide for sufficient identification of the refrigerant in the test sample to be processed. In order to ensure that the ''dirty cocktail'' of contaminated refrigerant provides an accurate test of the equipment's ability to recover used refrigerant, the standard set forth in appendix F now specifies in 6.2.1 that ''refrigerant shall be identified prior to the recovery process to within ±2% of the original manufacturer's formulation which was submitted to, and accepted by, EPA under its Significant New Alternatives Policy program.''

One other change was made in order to ensure that the ''dirty cocktail'' provides an accurate test of the equipment's ability. The proposed appendix F provided that the sample should contain a combination of mineral oil and POE oil in the ''dirty cocktail.'' Because replacement refrigerants other than HFC–134a are likely to be contaminated with a combination of mineral, PAG and POE oils, however, the ''dirty cocktail'' sample set forth in appendix F has been revised so that the oil in the sample shall be one-third mineral oil 525 suspension nominal, one-third PAG with 100 cSt viscosity at 40° C or equivalent, and one-third POE with 100 cSt viscosity at 40° C or equivalent. This specification should approximate more realistically the type of contaminants in used refrigerant that such equipment is likely to handle.

With respect to the new standard set forth in appendix F for recover-only equipment designed to service replacement refrigerants other than HFC–134a, one commenter asked whether service facilities must purchase a recover-only or recover/recycle unit for every new replacement refrigerant on the market. In order to respond to the commenter's question, and to provide information to the public that addresses several related questions that the Agency has recently received about replacement refrigerants other than HFC–134a, it is worth repeating here the contents of a letter sent to manufacturers of replacement refrigerants by EPA on October 16, 1996. The letter stated in part that ''under section 608 of the CAA, it is illegal to vent *any* MVAC refrigerant. Therefore, even in the absence of EPA regulations, technicians must, at a minimum, recover refrigerant and not release it to the atmosphere. In accordance with the use conditions required under the Significant New Alternatives Policy (SNAP) program, the recovery equipment must be dedicated to a specific refrigerant by permanently applying the fittings unique to that refrigerant. Thus, by applying the fittings, it is legal to convert a recovery machine to be used with an MVAC refrigerant other than the refrigerant the machine was originally intended to recover.

''Even though recovering a given refrigerant using permanently converted equipment is legal, it may not be technically desirable. Recovery machines are designed to be compatible with specific refrigerants, and incompatible materials may cause short circuits, damage to seals, and compressor failure. Technicians should check with the recovery equipment manufacturer for recommendations about the recovery of refrigerants other than the refrigerant the equipment was originally intended to recover. Conversion of recovery equipment for use with other refrigerants may invalidate any warranties offered by the equipment manufacturer.''

The October 16, 1996 letter continues: ''[s]ervice shops may either recover HFC–134a or recycle it using special

recycling equipment in the shop. Currently, however, it is *not* legal to recycle any other alternative MVAC refrigerant. EPA's policy is that until a standard for equipment designed to recycle a particular refrigerant is published and available (by EPA or an industry organization like SAE or UL), then it is illegal to recycle that refrigerant. * * * No EPA or established industry recycling standard exists today for any alternative refrigerant other than HFC–134a. Therefore, using a recycling machine to recycle these alternatives is not allowed.

''For cars that use HFC–134a, the service technician will usually recycle the refrigerant using equipment that meets the SAE standard, although recovery followed by off-site reclamation is also an option. For cars that use a blend, however, recovery using dedicated equipment and reclamation is currently the only option. No standard exists today to provide for the recycling of blends. * * * Unless EPA issues recycling standards for refrigerants other than CFC–12 and HFC–134a, it will remain illegal to recycle them.''

All of the replacement refrigerants on the market today other than HFC–134a are class II blend refrigerants rather than single chemical refrigerants. Within the upcoming months, EPA intends to develop regulations setting forth, to the extent applicable, standards for the following types of recovery and recycling equipment designed to service MVAC refrigerants other than CFC–12 and HFC–134a:

1. Recover-only Equipment

a. New equipment designed to service multiple blend refrigerants.

b. Existing equipment retrofitted for permanent servicing of a single blend refrigerant.

c. Existing equipment retrofitted for permanent servicing of multiple blend refrigerants.

2. Recover/Recycling Equipment

a. New equipment designed to service a single blend refrigerant.

b. New equipment designed to service multiple blend refrigerants.

c. Existing equipment retrofitted for permanent servicing of a single blend refrigerant.

d. Existing equipment retrofitted for permanent servicing of multiple blend refrigerants.

The standards that EPA intends to propose will provide that existing recover-only and recover/recycle equipment, once permanently converted for use with another refrigerant, will have to meet the same standards that apply to new equipment that recovers, or recovers and recycles, that refrigerant. For example, R–12 or R–134a recover-only equipment converted for permanent use with a single, specific blend replacement refrigerant would have to meet standards set forth in appendix F. R–12 recover-only equipment converted for permanent use with R–134a would have to meet the standards in appendix D, and R–12 recover/recycle equipment converted for permanent use with R–134a would have to meet the standards in appendix C. Similarly, R–12 recover/recycle equipment converted for permanent use with a single, specific blend refrigerant would have to meet the standard that governs new recover/recycling equipment designed to service a single blend refrigerant (if such a standard is ever developed; if not, EPA will continue to prohibit the conversion of CFC–12 or HFC–134a recycling equipment for use with other refrigerants). The standards for converted equipment would not only cross-reference the appropriate standard that must be met, but are likely also to specify that the conversion must be performed by the equipment manufacturer's service representative rather than the automotive service technician, that a unit may only be converted if retrofit procedures for that model have been certified by an independent testing laboratory, and that an appropriate label, indicating conformance to the appropriate standards, is affixed to the unit.

EPA is at this time uncertain as to whether equipment converted for use to one or more refrigerants other than the original refrigerant for which it was intended will be considered substantially identical to certified equipment. Section 609 provides that equipment purchased after the proposal of regulations shall be certified by an independent standards testing organization as meeting the applicable standard set forth in the regulations, while equipment purchased prior to the proposal of regulations shall be considered certified if it is substantially identical to equipment certified under the section 609 regulations. The standards that EPA intends to propose within the next year may specify that if equipment converted for use to one or more refrigerants other than the original refrigerant for which it was intended is converted prior to the date of the proposed rule, the Agency would consider the converted equipment to be substantially identical to new certified equipment, where the individual unit has been converted substantially according to the provisions set forth in the conversion standard, and if the equipment is converted after the date of the proposal, the equipment would have to be converted according to the specific provisions set forth in the conversion standard in order to be considered approved.

The Agency intends to work with industry groups, including refrigerant manufacturers and recovery/recycling equipment manufacturers, and with independent standards testing organizations, to develop proposed standards for the equipment listed above. These proposed standards will be published in the **Federal Register** and subject to public review and comment prior to promulgation of a final rule.

1. Standards for HFC–134a Recover/Recycle Equipment

Today's rule adopts a standard, set forth in appendix C, for HFC–134a recycling equipment for mobile air-conditioning. This standard establishes specific minimum equipment requirements for the recycling of HFC–134a that has been directly removed from, and is intended for reuse in, mobile air-conditioning systems. The standard contains specifications for labeling the equipment once it is certified, safety requirements, operating instructions and a functional description of the equipment, including hose and fitting specification, overfill protection requirements and storage tank requirements. The standard provides a procedure to test the equipment to verify that it meets the specifications of the standard.

Today's rule adds a standard of purity for recycled HFC–134a that establishes the minimum level of purity required for recycled HFC–134a removed from, and intended for reuse in, mobile air-conditioning systems. The standard, set forth in appendix C to this rule, sets purity specifications for levels of moisture, lubricants and noncondensable gases. Today's rule also establishes a standard recommended service procedure for containment of HFC–134a, set forth in appendix C, that provides guidelines for the technicians that service MVACs and MVAC-like appliances and operate refrigerant recycling equipment designed for HFC–134a. The standard provides specific procedures to recover the refrigerant by reducing system pressure to at least 102 mm of mercury vacuum. The standard contains requirements for stored refrigerant containers and disposal of empty containers.

The standards set forth in appendix C, which apply to HFC–134a, are nearly identical to SAE J2099, J2211 and J2210, standards previously adopted by the

Agency for similar equipment designed to service CFC–12. The differences between the SAE J standards and those set forth in appendix C are incidental, such as grammatical corrections and spelling, and do not affect the requirements of the standards.

2. Standards for HFC–134a Recover-Only Equipment

Today's rule adds standards for equipment that recovers but does not recycle HFC–134a refrigerant. Refrigerant recovered by this type of equipment must be properly recycled on-site or reclaimed off-site before it can be reused in an MVAC or MVAC-like appliance. The rule requires that equipment meets the standards set forth in appendix D. The standard requires that the container for used refrigerant be marked in black print ''Dirty Refrigerant—Do Not Use Without Recycling.'' The standard states that the recovery equipment be able to separate the refrigerant from the recovered refrigerant and indicate the amount of lubricant removed so that the technician can return the proper amount of lubricant to the system. Today's rule also establishes a standard recommended service procedure for containment of HFC–134a, set forth in appendix C, and referenced in appendix D, that provides guidelines for the technicians that service MVACs and operate refrigerant recycling equipment designed for HFC–134a. The standard provides specific procedures to recover the refrigerant by reducing system pressure to at least 102 mm of mercury vacuum. The standard contains requirements for stored refrigerant containers and disposal of empty containers.

The standards set forth in appendix D, which apply to HFC–134a, are nearly identical to SAE J1989 and J1732, standards previously adopted by the Agency for similar equipment designed to service CFC–12. The differences between the SAE J standards and those set forth in appendix D are incidental, such as grammatical and spelling corrections, and do not affect the requirements of the standard.

3. The Standard for Automotive Refrigerant Recycling Equipment Intended for Use With Both CFC–12 and HFC–134a

Today's rule adopts a standard that establishes specific minimum equipment requirements for automotive refrigerant recycling equipment intended for use with both CFC–12 and HFC–134a using a common refrigerant recycling circuit. The rule requires that equipment meet the standards set forth in appendix E. These standards require labeling of the equipment after certification, and include requirements to prevent cross contamination before operations involving a different refrigerant can begin, such as a seat leakage test, the installation of electrical interlocks, and visual indications to prevent cross contamination. The standards contain requirements to purify the refrigerant, safety requirements and functional description of the equipment, requirements for labeling of the storage tanks to identify CFC–12 and HFC–134a, and hose and connection requirements. Appendix E also provides guidelines for testing the equipment to verify that particular models meet the requirements of the standards. Appendix E cross-references SAE J1989, which is set forth in appendix A, and SAE J2211, which is set forth in appendix C.

The standards set forth in appendix E are nearly identical to SAE J1770. The differences between the SAE J standards and those set forth in appendix E are incidental, such as grammatical and spelling corrections, and do not affect the requirements of the standards.

4. Standard for Recover-only Equipment That Extracts a Single, Specific Refrigerant Other Than CFC–12 or HFC–134a

Today's rule adds a standard for equipment that recovers but does not recycle any single, specific refrigerant other than CFC–12 and HFC–134a, including but not limited to specific marketed blend refrigerants. Refrigerant that is recovered by this type of equipment must be properly reclaimed before it can be reused in an MVAC or MVAC-like appliance. The rule requires that this equipment meet the standards set forth in appendix F. Appendix F is based on, but not identical to, the recover-only standard for HFC–134a set forth in appendix D. The standard states that the recovery equipment be able to separate the lubricant from the recovered refrigerant and indicate the amount of lubricant removed so that the technician can return the proper amount of lubricant to the system. The primary substantive differences between appendix D and appendix F are located in section 6.2.1, the description of the ''dirty cocktail'' of standard contaminated refrigerant which is run through the equipment in order to test its efficacy. First, in order to ensure that the ''dirty cocktail'' of contaminated refrigerant provides an accurate test of the equipment's ability to recover used refrigerant, the standard set forth in appendix F specifies in 6.2.1 that ''refrigerant shall be identified prior to the recovery process to within ±2% of the original manufacturer's formulation which was submitted to, and accepted by, EPA under its Significant New Alternatives Policy program.'' That requirement is not contained in appendix D. Second, the ''dirty cocktail'' for testing HFC–134a equipment contains only PAG oil, while the ''dirty cocktail'' for testing other replacement refrigerants contains equal parts of PAG, POE and mineral oils. This specification should approximate more realistically the type of contaminants in used refrigerant that such equipment is likely to handle.

C. Substantially Identical Equipment

Section 609 of the Act provides that equipment purchased before the proposal of standards shall be considered certified if it is substantially identical to equipment certified by the EPA or by an independent standards testing organization approved by EPA. Section 82.36(b) of the regulations states that recover/recycle equipment designed for use with CFC–12 and purchased before the proposal of the standards for refrigerant recycling equipment in appendix A (*i.e.*, before September 4, 1991), and recover-only equipment designed for use with CFC–12 and purchased before the proposal of the standards for such equipment in appendix B (*i.e.*, before April 22, 1992), shall be considered certified if it is ''substantially identical'' to equipment approved under § 82.36(a).

Today's rule applies the Act's ''substantially identical'' provision to recover/recycle and recover-only equipment that services HFC–134a MVACs, recover/recycle equipment intended for use with both CFC–12 and HFC–134a MVACs, and equipment that recovers but does not recycle single, specific replacement refrigerants other than HFC–134a. These types of equipment will be considered approved if they are substantially identical to equipment approved under § 82.36(a) and if they were purchased prior to March 6, 1996, the date on which today's rule was proposed. A manufacturer or owner may request a determination from EPA on whether a particular unit or model is substantially identical. Equipment used with MVAC-like appliances is not covered under the ''substantially identical'' provision in § 82.36(b); rather, §§ 82.156(a)(5) and 82.158 (f) and (g) of the subpart F regulations establish grandfathering criteria for equipment used with MVAC-like appliances.

EPA considers equipment to be substantially identical if it performs equivalently to the equipment that is

certified to meet all the approved equipment standards but was purchased prior to the date of publication of the appropriate EPA proposed standard. In general, EPA proposes to follow the same strict approach in implementing the substantially identical provision for the equipment subject to the standards promulgated today as for recover/recycle and recover-only equipment that services CFC–12 MVACs and MVAC-like appliances. In situations where the models sold were not the same as the approved model, EPA will consult with approved independent standards testing organizations to evaluate the previously sold equipment. EPA will use these organizations' test data and any additional information submitted by the manufacturer, such as process diagrams and lists of components, in the evaluation. EPA will maintain a list of equipment determined to be substantially identical. An essential criterion for evaluation is that equipment removes refrigerant as efficiently as the applicable EPA standard and separates lubricant from refrigerant. The Agency is also interested in ensuring safety in operation of the equipment. Should manufacturers consider the possibility of retrofit kits to bring the pre-certification models up to the performance standard of certified models, EPA would require that the retrofit kits be certified by an approved independent standards testing organization and that equipment owners indicate in their certification to the Agency that they have retrofitted equipment.

The Agency is aware that some HFC–134a recover-only equipment has been sold prior to SAE's issuance in December, 1994 of the J1732 standard for HFC–134a recover-only equipment and that some dual refrigerant recycling equipment has been sold prior to SAE's issuance in December, 1995 of the J1770 standard for equipment that recovers both CFC–12 and HFC–134a. Because no SAE standard was in place at the time of sale, the equipment could not be certified by UL or ETL for EPA approval. In such an event, *i.e.*, where units are sold prior to the publication of the appropriate SAE standard, so that there is no sticker or plate on the unit showing that the model has been tested by UL or ETL to meet the appropriate SAE standard, and later, after publication of the SAE standard, units of the same model are certified by UL or ETL, the Agency considers the units sold prior to the publication of the standard to be substantially identical. The Agency reserves the right, however, to terminate such consideration of earlier units in the event the Agency receives evidence that some earlier units of that model (*e.g.*, prior to serial number xxxxx) were not able to achieve one or more of the provisions of the appropriate SAE standard. In that instance, the manufacturer will have to demonstrate to EPA that the units in question are substantially identical before EPA would make a determination to that effect. The Agency recognizes that manufacturers of units sold prior to the publication of the appropriate SAE standard may consider developing retrofit kits to bring pre-certification units up to the performance standard of certified units.

It should be noted that some dual refrigerant recycling equipment sold prior to SAE's issuance in December, 1995 of the J1770 standard for equipment that recovers both CFC–12 and HFC–134a, may be labeled with a UL or ETL sticker that indicates that the unit meets SAE J1990 and J2210. The Agency believes that these units do not necessarily meet the J1770 standard, and therefore the EPA standard set forth in appendix E. In the event that later versions of the same model of equipment become certified by UL or ETL to meet the J1770 standard, then the Agency will consider the units sold prior to the publication of the standard to be substantially identical, although EPA reserves the right to terminate such consideration, as noted above.

Several commenters stated that a simpler and more sensible approach to identifying substantially identical equipment would turn on whether the equipment was *manufactured* after a specific date, rather than *purchased* after the date upon which the applicable regulations were proposed. The statute itself, however, is explicit in its categorization of which equipment may qualify as substantially identical. Although it may be that pinpointing a manufacture date for a specific unit is generally easier than pinpointing a purchase date, the statute requires in section 609(b)(2)(B) that only equipment ''purchased before the proposal of regulations'' can be certified as being substantially identical. One commenter suggested that the resale of equipment by service facilities no longer in business to other facilities may cause confusion about how a purchase date is defined. Consequently, every reference set forth in the proposed text of 40 CFR 82.36(b)(1) to ''purchased before [date of applicable proposal]'' has been changed to ''initially purchased before [date of applicable proposal].''

D. Approved Independent Standards Testing Organizations

Section 82.38 establishes the criteria for approval of testing laboratories or organizations to certify whether equipment governed by the regulations meets the standards set forth in the regulations. Under the July 14, 1992 final rule and the May 2, 1995 supplemental final rule, approved organizations determine whether CFC–12 recover/recycle and recover-only equipment meets the standards set forth in the appendices A and B to the rule, which are based on SAE standards. Today's rule expands that provision so that these approved organizations may determine whether the equipment subject to today's rule meets the standards set forth in the appropriate appendices.

Because the application materials received by the Agency from UL on October 21, 1991, and from ETL on November 27, 1991 demonstrate that both organizations have met the criteria set forth in 40 CFR 82.38(b) with respect to all equipment subject to today's rule, and because the Agency has received from both UL and ETL written requests stating that all the application criteria are still being met, and requesting that they be approved to certify the equipment subject to today's rule, the Agency today approves UL and ETL to certify this equipment. The Agency also hereby approves any equipment certifications performed by either of these organizations which demonstrate that particular equipment models meet SAE standards upon which any of the appendices listed in this rule is based.

No commenters to the proposal made any statements concerning the approval by EPA of independent standards testing organizations.

E. Technician Training and Certification

Section 82.40 establishes the standards for the approval of programs to train and certify technicians. The standards cover training, the subject material that must be covered by each program, and minimum test administration procedures. Summaries of reviews of programs must be submitted every two years and programs must offer technicians proof of certification upon successful completion of the test.

The Agency wishes to note that the technician training and certification requirements set forth in today's rule amending § 82.40 apply to technicians who work on MVAC-like appliances as well as to those who work on MVACs. Section 82.161(a)(5) requires that technicians who service or repair

MVAC-like appliances either must be properly certified as Type II technicians in accordance with the subpart B regulations or must complete the training and certification test offered by a training and certification program approved under § 82.40. Any technicians who wish to service MVAC-like appliances and who in the future become certified under § 82.40 rather than as Type II technicians must therefore receive training in the equipment standards attached as appendices to today's rule.

At this time, 27 organizations have been approved by EPA to train and certify technicians in the use of CFC–12 recover-only and recover/recycle equipment. Ten of these organizations train and certify their employees, while the remaining train members of the general public. While EPA's approval of these organizations has been limited to CFC–12 equipment, the Agency believes that for purposes of training and certification conducted prior to January 29, 1998, these organizations should also be considered as approved for purposes of HFC–134a equipment, equipment that recycles both CFC–12 and HFC–134a using common circuitry, and equipment that extracts, but does not recycle, replacement refrigerants other than HFC–134a. As discussed below, the equipment governed by the standards in today's rule and CFC–12 equipment are very similar, the procedures for extracting refrigerant are very similar for all types of equipment, and the procedures for recycling refrigerant are very similar for all types of recycling equipment. Retraining and recertifying of technicians already certified to use CFC–12 equipment would therefore produce only a limited environmental benefit. In addition, such retraining and recertification would impose a large burden on the technicians and the organizations that certify them. For these reasons, EPA is today approving the 27 organizations noted above for training and certification of technicians in the use of equipment that is governed by the standards in today's rule, conducted prior to January 29, 1998.

EPA will also approve organizations for future training and certification of technicians for the use of HFC–134a equipment, equipment that recycles both CFC–12 and HFC–134a using common circuitry, and equipment that extracts, but does not recycle, replacement refrigerants other than HFC–134a, on the condition that each organization certify in writing to the Agency that its training materials discuss the standards set forth in Appendices C, D, E and F, and that its testing materials include questions concerning those standard. Each organization that submits such a certification shall be approved upon the date which is the later of (i) the effective date of this rule (*i.e.*, January 29, 1998), or (ii) the receipt by the Agency of such a certification. Organizations that do not submit such a certification will not be approved to train and certify future technicians for the use of the equipment governed by the standards in today's rule. The Agency reserves the right, pursuant to § 82.40(c), to request that when an organization submits its certification to EPA, it also provides the Agency with a summary of its review of its test subject material and any changes made.

As noted above, the prior training and testing of previously approved technicians for equipment governed by the standards in today's rule, adequately and sufficiently covers the standards set forth in appendices C, D, E and F because of the large overlap between the text of the standards contained in appendices A and B, and the text of the standards contained in appendices C, D, E and F. In appendices A and B, and in appendices C, D, E and F, the following provisions are identical or nearly identical: safety requirements; requirements that the manufacturer must provide operating instructions; requirements that the equipment must ensure the refrigerant recovery by reducing system pressure below atmospheric to a minimum of 102 mm of mercury; the preconditioning of the equipment with a contaminated sample; the composition of that contaminated sample; the requirements that the equipment must be certified by UL or an equivalent certifying laboratory; the requirements that the label on the equipment must state that it has been design certified to meet applicable SAE standards; and the additional storage tank requirements.

Where the SAE J1990-based standards in appendix A differ from the SAE J1732-based standards in appendices D and F, they differ largely because appendix A contains many provisions that relate to the recycle portion of the equipment operation and which are thus not applicable to appendices D and F. For example, appendix A describes requirements for the recycling test cycle and for the quantitative determination of moisture, lubricant, and noncondensable gas in that cycle.

Where the HFC–134a standards in appendices C and D differ from the SAE J1990- and J2209-based standards in appendices A and B, they differ largely because of the different chemical properties of the HFC–134a molecule. For example, the levels of contaminants in the CFC–12 ''dirty cocktail'' in J1990 are different than those in the HFC–134a ''dirty cocktail'' described in J2210, and the maximum acceptable levels of contamination by air, oil and moisture are different for CFC–12, as described in J1989, than for HFC–134a, as described in J2211.

Appendix E is similar to the other standards for recycling CFC–12 refrigerant set forth in appendix A and for recycling HFC–134a refrigerant set forth in appendix B, but also contains requirements designed to demonstrate that the equipment is capable of preventing cross-contamination of refrigerants, including a seat leakage test and the installation of electrical interlock devices and filters. In addition, the standard requires the performance of a testing sequence which puts the equipment through a CFC–12 recycling sequence, followed by an HFC–134a recycling sequence. The ''dirty cocktails'' used in such testing, however, are identical to the ''dirty cocktails'' used in appendices A and C for testing the efficacy of cleaning single refrigerants.

A review of SAE J1732 indicates that it contains two provisions that relate to the recovery of refrigerant for which there are no equivalent provisions in SAE J1990. First, section 6.3.2 of SAE J1732 requires that the equipment discharge or transfer fitting shall be ½″ ACME thread. SAE did not consider this requirement until after the publication of the final version of J1990. This requirement to include a unique fitting guards against the mixing of different refrigerants. Second, section 6.1 of SAE J1732 requires that the unit must have a device that assures that refrigerant has been recovered so that outgassing is prevented. Although there is no equivalent to this provision in SAE J1990, J1989 requires safeguards to prevent outgassing.

No commenters to the proposed rule suggested any revisions to the technician training and certification provisions outlined in the proposal.

F. Sales Restriction

Section 609 made it unlawful, effective November 15, 1992, for any person to sell or distribute, or offer for sale or distribution, except to section 609 certified technicians, any class I or class II substance suitable for use as refrigerant in a motor vehicle air-conditioning system and that is in a container with less than 20 pounds of refrigerant. Consequently, sales of small cans of CFC–12, as well as small cans of any HCFC blend which EPA's Significant New Alternatives Policy

(SNAP) program may determine to be acceptable as a substitute for CFC–12 in MVACs and MVAC-like appliances, are limited to section 609 certified technicians. In addition, section 608 regulations that became effective November 14, 1994 (58 FR 28714) restrict the sales of all containers (regardless of size) of any class I or II refrigerant to technicians certified under either section 608 or section 609 of the Act.

EPA is preparing to propose in a separate rule several changes to the regulations promulgated under section 608 of the Act. The proposed changes to the section 608 regulations, pursuant to the mandate of section 608(c)(2), would establish standards and requirements for the servicing of appliances and industrial process refrigeration systems that use refrigerants that substitute for the currently-regulated class I or class II substances. In addition, in that proposal, the Agency may include a provision proposing to restrict the sale of all containers (regardless of size) of non-ozone-depleting substitute refrigerants, including HFC–134a, to technicians certified under either section 608 or section 609 of the Act. Should the Agency determine to propose such a sales restriction, the proposed changes to the regulatory text and explanatory discussion in the preamble would be entirely contained in the section 608 proposed rule, even though the changes would also affect industries governed under section 609—automotive refrigerant distributors, automobile manufacturers, and the automotive service industry. All parties interested in whether EPA decides to institute a sales restriction are therefore urged to review the language contained in any future section 608 proposal.

V. Summary of Supporting Analyses

A. Executive Order 12866

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

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

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

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

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

It has been determined that this rule is a ''significant regulatory action'' within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record. The Agency prepared an analysis to assess the impact of this regulation (see Regulatory Assessment for EPA's Proposed Rule on Standards and Requirements for Servicing of Motor Vehicle Air Conditioners that use Refrigerants other than Class I or Class II Substances, U.S. EPA Stratospheric Protection Division, November, 1995) which covers both recover/recycle equipment and recover-only equipment, and is available for review in the public docket for this rulemaking. The analysis indicates that total annualized costs to affected industrial sectors will range from $4.9 million to $14.3 million, depending on what type of recovery/recycling equipment automotive service facilities choose to purchase.

B. Regulatory Flexibility/Fairness to Small Entities

1. Regulatory Flexibility Act

a. Purpose: EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. In addition, the Agency has performed an initial screening analysis and determined that this regulation does not have a significant economic impact on a substantial number of small businesses. The screening analysis is found in Appendix A in the Regulatory Assessment for EPA's Proposed Rule on Standards and Requirements for Servicing of Motor Vehicle Air Conditioners that use Refrigerants other than Class I or Class II Substances (U.S. EPA Stratospheric Protection Division, October, 1995) (Regulatory Assessment) and is available for review in the docket. A summary of the methodology and results of the analysis are presented below.

b. Screening Analysis Methodology and Results: EPA first characterized the regulated community by identifying the SIC codes that would be involved in the servicing and repair of motor vehicle air conditioners. EPA considered how the regulated community would be affected by the main provisions of the rule: the equipment standards, the technician certification regulations, and the regulations governing service facility practices. After looking at typical costs to each service facility, the analysis reviewed total costs to the regulated community as a whole.

The equipment standards and technician certification provisions contained in the rule impose costs on the regulated community. With respect to equipment standards, EPA assumed that each service establishment would purchase a single piece of equipment in order to comply with the regulation. The analysis took into account the life of the equipment (in terms of number of jobs performed), the incremental labor time to recover, or to recover and recycle, refrigerant, the current labor rate, and general operation and maintenance costs. EPA's analysis also considered the cost savings realized by service establishments for the recovery and reuse of substitute refrigerants and through the salvage value of equipment. The analysis then outlined two different private cost scenarios. The less expensive cost (lower-bound) scenario assumed that a facility would choose to purchase single refrigerant recover/recycle equipment, while the more expensive (upper-bound) option assumed that a facility would choose to purchase dual refrigerant recover/recycle equipment. In estimating the costs of complying with the technician certification requirements, the screening analysis took into account the number of service technicians employed by small and large facilities, employment turnover rates for those employees, and the cost to certify a single technician.

The screening analysis also estimated some of the benefits of the rule, distinguishing between those that are readily quantifiable and those that are not. Specifically, the analysis described the marginal social benefits associated with each kilogram of greenhouse gas emission reduction resulting from the imposition of the rule and then estimated the total social benefits associated with all emissions reductions resulting from the imposition of the rule. The benefits discussion also estimated the potential cost savings to members of the regulated community, including motor vehicle disposal facilities, that might take advantage of mobile recovery service, which today's rule explicitly permits. Finally, the analysis briefly discussed non-quantifiable benefits of the rule such as increased efficiencies and equity in the marketplace resulting from the imposition of the rule.

In order to determine whether the rule will have a significant economic impact on a substantial number of small entities, the Agency determined from financial data what portion of the regulated community falls within the definition of ''small entity,'' and performed tests using sales, profits and cash flow measures in order to determine the nature of adverse impacts, if any. The number of small entities servicing MVACs was estimated, using Small Business Administration guidelines, at 160,366. Using the sales test, EPA's preferred criterion for gauging the economic impact of a regulation on small businesses, the Agency determined that after the imposition of the 1992 section 609 regulations (the baseline), 3.6% of these facilities were significantly affected. With respect to the regulations being promulgated today, the screening analysis determined that an additional 1.8% of these facilities will be significantly impacted by today's rule, based on the estimated annualized cost of $100 for each small facility to comply. For more details concerning the results of the analysis, copies of the Regulatory Assessment are available for review in the docket.

2. Note on Recordkeeping and Reporting

This rule will not impose any new recordkeeping or reporting requirements on any small entity or other member of the regulated community.

3. Steps EPA Has Taken to Minimize Economic Impacts on Small Entities

The portions of today's regulation that impose costs on the regulated community implement specific requirements of section 609 of the Act, without the exercise of discretion by EPA. Section 609 explicitly requires the Administrator to promulgate regulations establishing standards for motor vehicle refrigerant recycling equipment. Regulations already in place have established standards for equipment that recovers and recycles CFC–12; the equipment standards set forth in today's rule fulfill the statutory obligation of the Administrator to establish standards for equipment that recovers and recycles HFC–134a and other substitute refrigerants. Section 609 also requires that automotive service technicians who service MVAC systems be trained and certified in the proper use of EPA-approved refrigerant recycling equipment. The technician certification requirements contained in today's rule fulfill the statutory mandate to establish such requirements for becoming certified to handle substitute refrigerants.

In order to minimize the economic impact on small entities created by the Agency's fulfilling its statutory mandate, EPA determined that the equipment standards promulgated today should resemble as closely as possible voluntary industry standards set by the Society of Automotive Engineers (SAE). Virtually all equipment marketed today that recovers, or recovers and recycles, substitute refrigerants already meets these voluntary industry standards. Installers have been purchasing the equipment at least since November 15, 1995, when a self-effectuating provision in section 608 of the Act prohibited venting substitute refrigerants into the atmosphere. Meeting the voluntary standards is a common indication of the quality of the equipment. When purchasing equipment, installers look not only to see that it meets the appropriate SAE standard, but also to determine that the equipment has been tested against that standard by an independent testing laboratory such as UL. In developing federally mandated equipment standards for refrigerant recycling equipment, section 609 required EPA to ensure that Agency standards were at least as stringent as the voluntary SAE standards. EPA has done so, but has also decided against issuing standards that were more stringent than the voluntary industry standards, not only in part because the Agency believes that the voluntary standards are protective of human health and the environment, but also because small businesses and other stakeholders are already familiar with the equipment that meets the voluntary standards and thus will also be familiar with the equipment that meets the EPA standards.

EPA has also engaged in extensive outreach to the affected community, and in particular to small entities within that community, in order to minimize any economic impacts this rule may have on them. To respond to questions, the Agency has long maintained a toll-free hotline (800/296–1996) and an award-winning web site that contains copies of any EPA fact sheets and regulations that relate to section 609. In addition, Agency staff have spoken, and/or sponsored trade booths, at conventions and conferences sponsored by industry trade associations such as the Mobile Air Conditioning Society, the International Mobile Air Conditioning Association, ASIA/APAA, and the National Tire Dealers and Retreaders Association. The Agency has also worked extensively on articles in automotive service journals such as Motor and Motor Age, and with other partners such as the National Institute for Automotive Service Excellence (ASE), which has tested over 150,000 technicians nationwide in motor vehicle heating and air-conditioning servicing. Using all of these methods, EPA has attempted to alert small entities to when and how the section 609 regulations would expand to apply to refrigerants that substitute for CFC–12 in MVACs, and to technicians who service vehicles that use substitute refrigerants. In conjunction with the publication of today's rule, EPA is issuing a short, plain-English fact sheet for automotive service facilities that summarizes the rule and responds to these questions.

EPA has also engaged in outreach activities to inform motor vehicle disposal facilities about the provisions of this rule that affect them. The recovery of refrigerant is a critical element in the motor vehicle disposal process, and yet calls to the hotline and to EPA staff had long indicated that automotive recyclers did not understand how to comply with Title VI regulations. EPA responded by promulgating today's rule. In conjunction with the publication of the rule, EPA is issuing a short, plain-English fact sheet specifically to assist the automotive recycling industry in its efforts to comply with the requirements of Title VI. It explains not only what requirements governing refrigerant recovery and re-use apply, but also where in the regulations each requirement is located.

C. Paperwork Reduction Act

This action does not add any new requirements or increases burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the final rule, promulgated on July 14, 1992, which established standards and requirements regarding the servicing of MVACs and has assigned OMB control number 2060–0247 (EPA ICR No. 1617.02).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able

to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector, in any one year. The majority of the regulations promulgated today implement requirements specifically set forth by Congress in section 609 of the Clean Air Act without the exercise of any discretion by EPA. The remainder merely serve to clarify existing regulatory text and therefore impose no new additional enforceable duties on governmental entities or the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 82

Environmental protection, Motor vehicle air-conditioning, Reporting and recordkeeping requirements, Recover-only equipment, Recover/recycle equipment, Reporting and certification requirements, Stratospheric ozone layer.

Dated: December 17, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR Part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.30 is amended by revising paragraph (a) to read as follows:

§ 82.30 Purpose and scope.

(a) The purpose of the regulations in this subpart B is to implement section 609 of the Clean Air Act, as amended (Act) regarding the servicing of motor vehicle air conditioners (MVACs), and to implement section 608 of the Act regarding certain servicing, maintenance, repair and disposal of air conditioners in MVACs and MVAC-like appliances (as that term is defined in 40 CFR 82.152).

* * * * *

3. Section 82.32 is amended by adding a heading to paragraph (e), by revising paragraph (e)(1), by adding paragraphs (e)(3), (e)(4), and (e)(5), by revising paragraph (h), and by adding paragraph (i), to read as follows:

§ 82.32 Definitions.

* * * * *

(e) *Properly using.* (1) Properly using means using equipment in conformity with the regulations set forth in this subpart, including but not limited to the prohibitions and required practices set forth in § 82.34, and the recommended service procedures and practices for the containment of refrigerant set forth in appendices A, B, C, D, E, and F of this subpart, as applicable. In addition, this term includes operating the equipment in accordance with the manufacturer's guide to operation and maintenance and using the equipment only for the controlled substance for which the machine is designed. For equipment that extracts and recycles refrigerant, properly using also means to recycle refrigerant before it is returned to a motor vehicle air conditioner or MVAC-like appliance, including to the motor vehicle air conditioner or MVAC-like appliance from which the refrigerant was extracted. For equipment that only recovers refrigerant, properly using includes the requirement to recycle the refrigerant on-site or send the refrigerant off-site for reclamation.

* * * * *

(3) Notwithstanding any other terms of this paragraph (e), approved refrigerant recycling equipment may be transported off-site and used to perform service involving refrigerant at other locations where such servicing occurs. Any such servicing involving refrigerant must meet all of the requirements of this subpart B that would apply if the servicing occurred on-site.

(4) Facilities that charge MVACs or MVAC-like appliances with refrigerant but do not perform any other service involving refrigerant (*i.e.*, perform ''top-offs'' only) are considered to be engaged in ''service involving refrigerant'' and are therefore subject to any and all requirements of this subsection that apply to facilities that perform a wider range of refrigerant servicing. For facilities that charge MVACs, this includes the requirement to purchase approved refrigerant recycling equipment. For facilities that only charge MVAC-like appliances, this does not include the requirement to purchase approved refrigerant recycling equipment, but does include the requirement to be properly trained and certified by a technician certification program approved by the Administrator pursuant to either § 82.40 or § 82.161(a)(5).

(5)All persons opening (as that term is defined in § 82.152) MVAC-like appliances must have at least one piece of approved recovery or recycling equipment available at their place of business.

* * * * *

(h) *Service involving refrigerant* means any service during which discharge or release of refrigerant from the MVAC or MVAC-like appliance to the atmosphere can reasonably be expected to occur. Service involving refrigerant includes any service in which an MVAC or MVAC-like appliance is charged with refrigerant but no other service involving refrigerant is performed (*i.e.*, a ''top-off'').

(i) *Motor vehicle disposal facility* means any commercial facility that engages in the disposal (which includes

dismantling, crushing or recycling) of MVACs or MVAC-like appliances, including but not limited to automotive recycling facilities, scrap yards, landfills and salvage yards engaged in such operations. Motor vehicle repair and/or servicing facilities, including collision repair facilities, are not considered motor vehicle disposal facilities.

4. Section 82.34 is amended by revising the section heading and by revising paragraph (a), revising the reference ''§ 82.42(b)(4)'' to read ''§ 82.42(b)(3)'' in paragraph (b), and by adding paragraph (d) to read as follows:

§ 82.34 Prohibitions and required practices.

(a) No person repairing or servicing MVACs for consideration, and no person repairing or servicing MVAC-like appliances, may perform any service involving the refrigerant for such MVAC or MVAC-like appliance:

(1) Without properly using equipment approved pursuant to § 82.36;

(2) Unless any such person repairing or servicing an MVAC has been properly trained and certified by a technician certification program approved by the Administrator pursuant to § 82.40; and

(3) Unless any such person repairing or servicing an MVAC-like appliance has been properly trained and certified by a technician certification program approved by the Administrator pursuant to either § 82.40 or § 82.161(a)(5).

* * * * *

(d) *Motor vehicle disposal facilities.* (1) Any refrigerant that is extracted from an MVAC or an MVAC-like appliance (as that term is defined in § 82.152) bound for disposal and located at a motor vehicle disposal facility may not be subsequently used to charge or recharge an MVAC or MVAC-like appliance, unless, prior to such charging or recharging, the refrigerant is either:

(i) Recovered, and reclaimed in accordance with the regulations promulgated under § 82.32(e)(2) of this subpart B; or

(ii) (A) Recovered using approved refrigerant recycling equipment dedicated for use with MVACs and MVAC-like appliances, either by a technician certified under paragraph (a)(2) of this section, or by an employee, owner, or operator of, or contractor to, the disposal facility; and

(B) Subsequently recycled by the facility that charges or recharges the refrigerant into an MVAC or MVAC-like appliance, properly using approved refrigerant recycling equipment in accordance with any applicable recommended service procedures set forth in the appendices to this subpart B.

(2) Any refrigerant the sale of which is restricted under subpart F that is extracted from an MVAC or an MVAC-like appliance bound for disposal and located at a motor vehicle disposal facility but not subsequently reclaimed in accordance with the regulations promulgated under subpart F, may be sold prior to its subsequent re-use only to a technician certified under paragraph (a)(2) of this section. Any technician certified under paragraph (a)(2) of this section who obtains such a refrigerant may subsequently re-use such refrigerant only in an MVAC or MVAC-like appliance, and only if it has been reclaimed or properly recycled.

5. Section 82.36 is amended by revising paragraphs (a)(2) and (b) and adding paragraphs (a)(3) through (a)(7) to read as follows:

§ 82.36 Approved refrigerant recycling equipment.

(a)(1) * * *

(2) Equipment that recovers and recycles CFC–12 refrigerant must meet the standards set forth in appendix A of this subpart (Recommended Service Procedure for the Containment of CFC–12, Extraction and Recycle Equipment for Mobile Automotive Air-Conditioning Systems, and Standard of Purity for Use in Mobile Air Conditioning Systems).

(3) Equipment that recovers but does not recycle CFC–12 refrigerant must meet the standards set forth in appendix B of this subpart (Recommended Service Procedure for the Containment of CFC–12 and Extraction Equipment for Mobile Automotive Air-Conditioning Systems).

(4) Equipment that recovers and recycles HFC–134a refrigerant must meet the standards set forth in appendix C of this subpart (Recommended Service Procedure for the Containment of HFC–134a, Standards for Recover/Recycle Equipment that Extracts and Recycles HFC–134a, and Standard of Purity for Recycled HFC–134a for Use in MVACs).

(5) Equipment that recovers but does not recycle HFC–134a refrigerant must meet the standards set forth in appendix D of this subpart (HFC–134a Recover-Only Equipment and Recommended Service Procedure for the Containment of HFC–134a).

(6) Equipment that recovers and recycles both CFC–12 and HFC–134a using common circuitry must meet the standards set forth in appendix E of this subpart (Automotive Refrigerant Recycling Equipment Intended for Use with both CFC–12 and HFC–134a, Recommended Service Procedure for the Containment of CFC–12, and Recommended Service Procedure for the Containment of HFC–134a).

(7) Equipment that recovers but does not recycle refrigerants other than HFC–134a and CFC–12 must meet the standards set forth in appendix F of this subpart (Recover-Only Equipment that Extracts a Single, Specific Refrigerant Other Than CFC–12 or HFC–134a).

(b)(1) Refrigerant recycling equipment that has not been certified under paragraph (a) of this section shall be considered approved if it is substantially identical to the applicable equipment certified under paragraph (a) of this section, and:

(i) For equipment that recovers and recycles CFC–12 refrigerant, it was initially purchased before September 4, 1991;

(ii) For equipment that recovers but does not recycle CFC–12 refrigerant, it was initially purchased before April 22, 1992;

(iii) For equipment that recovers and recycles HFC–134a refrigerant, it was initially purchased before March 6, 1996;

(iv) For equipment that recovers but does not recycle HFC–134a refrigerant, it was initially purchased before March 6, 1996;

(v) For equipment that recovers but does not recycle any single, specific refrigerant other than CFC–12 or HFC–134a, it was initially purchased before March 6, 1996; and

(vi) For equipment that recovers and recycles HFC–134a and CFC–12 refrigerant using common circuitry, it was initially purchased before March 6, 1996.

(2) Equipment manufacturers or owners may request a determination by the Administrator by submitting an application and supporting documents that indicate that the equipment is substantially identical to approved equipment to: MVACs Recycling Program Manager, Stratospheric Protection Division (6205J), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Attn: Substantially Identical Equipment Review. Supporting documents must include process flow sheets, lists of components and any other information that would indicate that the equipment is capable of processing the refrigerant to the standards in appendix A, B, C, D, E or F of this subpart, as applicable. Authorized representatives of the Administrator may inspect equipment for which approval is being sought and request samples of refrigerant that has been extracted and/or recycled using the equipment. Equipment that fails to meet appropriate standards will not be considered approved.

(3) Refrigerant recycling equipment that recovers or recovers and recycles

CFC–12 refrigerant and has not been certified under paragraph (a) or approved under paragraphs(b)(1) and (b)(2) of this section shall be considered approved for use with an MVAC-like appliance if it was manufactured or imported before November 15, 1993, and is capable of reducing the system pressure to 102 mm of mercury vacuum under the conditions set forth in appendix A of this subpart.

* * * * *

6. Section 82.38 is amended by revising paragraphs (a) and (b)(1)(iii) to read as follows:

§ 82.38 Approved independent standards testing organizations.

(a) Any independent standards testing organization may apply for approval by the Administrator to certify equipment as meeting the standards in appendix A, B, C, D, E, or F of this subpart, as applicable. The application shall be sent to: MVACs Recycling Program Manager, Stratospheric Protection Division (6205J), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

(b) * * *

(1) * * *

(iii) Thorough knowledge of the standards as they appear in the applicable appendices of this subpart; and

* * * * *

7. Section 82.40 is amended by revising paragraph (a)(2)(i) to read as follows:

§ 82.40 Technician training and certification.

(a) * * *

(2) * * *

(i) The standards established for the service and repair of MVACs and MVAC-like appliances as set forth in appendices A, B, C, D, E, and F of this subpart. These standards relate to the recommended service procedures for the containment of refrigerant, extraction equipment, extraction and recycle equipment, and the standard of purity for refrigerant in motor vehicle air conditioners.

* * * * *

8. Appendix C is added to Subpart B to read as follows:

Appendix C to Subpart B of Part 82—Standard for Recover/Recycle Equipment for HFC–134a Refrigerant

I. SAE J2210, issued December, 1991.

HFC–134a Recycling Equipment for Mobile Air Conditioning Systems

Foreword

The purpose of this standard is to establish the specific minimum equipment specification required for the recycling of HFC–134a that has been directly removed from, and is intended for reuse in, mobile air-conditioning systems. Establishing such specifications will assure that system operation with recycled HFC–134a will provide the same level of performance and durability as new refrigerant.

1. Scope

The purpose of this standard is to establish specific minimum equipment requirements for recycling HFC–134a that has been directly removed from, and is intended for reuse in, mobile air-conditioning (A/C) systems.

2. References

Applicable Documents—The following publications form a part of this specification to the extent specified.

2.1.1

SAE Publications—Available from SAE, 400 Commonwealth Drive, Warrendale, PA 15096–0001.

SAE J2099—Standard of Purity for Recycled HFC-134a for Use in Mobile Air-Conditioning Systems

SAE J2196—Service Hoses for Automotive Air-Conditioning

SAE J2197—Service Hose Fittings for Automotive Air-Conditioning

2.1.2

CGA Publications—Available from CGA, 1235 Jefferson Davis Highway, Arlington, VA 22202.

CGA Pamphlet S–1.1-Pressure Relief Device Standard

Part 1—Cylinders for Compressed Gases

2.1.3

DOT Publications—Available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

DOT Standard, 49 CFR 173.304—Shippers-General Requirements for Shipments and Packagings

2.1.4

UL Publications—Available from Underwriters Laboratories, 333 Pfingsten Road, Northbrook, IL 60062–2096.

UL 1769—Cylinder Valves

UL 1963—Refrigerant Recovery/Recycling Equipment

3. Specification and General Description

3.1 The equipment must be able to remove and process HFC–134a from mobile A/C systems to the purity level specified in SAE J2099.

3.2 The equipment shall be suitable for use in an automotive service garage environment and be capable of continuous operation in ambients from 10 to 49°C (50 to 120°F).

3.3 The equipment must be certified that it meets this specification by Underwriters Laboratories (UL) or an equivalent certifying laboratory.

3.4 The equipment shall have a label which states ''Design Certified by (Certifying Agent) to meet SAE J2210'' in bold-type letters a minimum of 3 mm in height.

4. Refrigerant Recycling Equipment Requirements

4.1 Moisture and Acid—The equipment shall incorporate a desiccant package that must be replaced before saturation with moisture, and whose mineral acid capacity is at least 5% by weight of the dry desiccant.

4.1.1 The equipment shall be provided with a moisture detection means that will reliably indicate when moisture in the HFC–134a reaches the allowable limit and desiccant replacement is required.

4.2 Filter—The equipment shall incorporate an in-line filter that will trap particulates of 15 micron spherical diameter or greater.

4.3 Noncondensable Gases

4.3.1 The equipment shall either automatically purge noncondensables (NCGs) if the acceptable level is exceeded or incorporate a device that indicates to the operator that the NCG level has been exceeded. NCG removal must be part of the normal operation of the equipment and instructions must be provided to enable the task to be accomplished within 30 minutes.

4.3.2 Refrigerant loss from noncondensable gas purging during the testing described in Section 8 shall not exceed 5% by weight of the total contaminated refrigerant removed from the test system.

4.4 Recharging and Transfer of Recycled Refrigerant—Recycled refrigerant for recharging and transfer shall be taken from the liquid phase only.

5. Safety Requirements

5.1 The equipment must comply with applicable federal, state, and local requirements on equipment related to handling HFC–134a material. Safety precautions or notices related to safe operation of the equipment shall be prominently displayed on the equipment and should also state ''CAUTION—SHOULD BE OPERATED BY QUALIFIED PERSONNEL''.

5.2 HFC–134a has been shown to be nonflammable at ambient temperature and atmospheric pressure. However, tests under controlled conditions have indicated that, at pressures above atmospheric and with air concentrations greater than 60% by volume, HFC–134a can form combustible mixtures. While it is recognized that an ignition source is also required for combustion to occur, the presence of combustible mixtures is a potentially dangerous situation and should be avoided.

5.3 Under NO CIRCUMSTANCES should any equipment be pressure tested or leak tested with air/HFC–134a mixtures. Do not use compressed air (shop air) for leak detection in HFC–134a systems.

6. Operating Instructions

6.1 The equipment manufacturer must provide operating instructions, including proper attainment of vehicle system vacuum (*i.e.*, when to stop the extraction process), filter/desiccant replacement, and purging of noncondensable gases (air). Also to be included are any other necessary maintenance procedures, source information for replacement parts and repair, and safety precautions.

6.2 The equipment must prominently display the manufacturer's name, address, the type of refrigerant it is designed to recycle, a service telephone number, and the part number for the replacement filter/drier.

7. Functional Description

7.1 The equipment must be capable of ensuring removal of refrigerant from the system being serviced by reducing the system pressure to a minimum of 102 mm (4 in) of mercury below atmospheric pressure (i.e., vacuum).

7.2 During operation, the equipment shall provide overfill protection to assure that the liquid fill of the storage container (which may be integral or external) does not exceed 80% of the tank's rated volume at 21.1°C (70°F) per Department of Transportation (DOT) Standard, 49 CFR 173.304 and the American Society of Mechanical Engineers.

7.3 Portable refillable tanks or containers used in conjunction with this equipment must be labeled ''HFC-134a'', meet applicable DOT or Underwriters Laboratories (UL) Standards, and shall incorporate fittings per SAE J2197.

7.3.1 The cylinder valve shall comply with the standard for cylinder valves, UL 1769.

7.3.2 The pressure relief device shall comply with the Pressure Relief Device Standard Part 1—Cylinders for Compressed Gases, CGA Pamphlet S–1.1.

7.3.3 The tank assembly shall be marked to indicate the first retest date which shall be 5 years after the date of manufacture. The marking shall indicate that retest must be performed every subsequent 5 years. The marking shall be in letter at least 6 mm (¼ in) high.

7.4 All flexible hoses must comply with SAE J2196.

7.5 Service hoses must have shutoff devices located within 30 cm (12 in) of the connection point to the system being serviced as identified in J2196. All service fittings must comply with SAE J2197.

7.6 The equipment must be able to separate the lubricant from the removed refrigerant and accurately indicate the amount of lubricant removed during the process, in 30 mL (1 fl oz) units. Refrigerant dissolves in lubricants and, as a result, increases the volume of the recovered lubricant sample. This creates the illusion that more lubricant has been recovered than actually has been. The equipment lubricant measuring system must take into account such dissolved refrigerant to prevent overcharging the vehicle system with lubricant. (Note: Use only new lubricant to replace the amount removed during the recycling process. Used lubricant should be discarded per applicable federal, state, and local requirements.)

8. Testing

This test procedure and its requirements are to be used to determine the ability of the recycling equipment to adequately recycle contaminated refrigerant.

8.1 The equipment shall be able to clean the contaminated refrigerant in section 8.3 to the purity level defined in SAE J2099.

8.2 The equipment shall be operated in accordance with the manufacturer's operating instructions.

8.3 Contaminated HFC–134a Sample.

8.3.1 The standard contaminated refrigerant shall consist of liquid HFC–134a with 1300 ppm (by weight) moisture (equivalent to saturation at 38°C [100 °F]), 45,000 ppm (by weight) HFC–134a compatible lubricant, and 1000 ppm (by weight) of noncondensable gases (air).

8.3.1.1 The HFC–134a compatible lubricant referred to in section 8.3.1 shall be ICI DGLF 118, or equivalent, which shall contain no more than 1000 ppm by weight of moisture.

8.4 Test Cycle

8.4.1 The equipment must be preconditioned by processing 13.6 kg (30 lb) of the standard contaminated HFC–134a at an ambient of 21°C (70°F) before starting the test cycle. 1.13 kg (2.5 lb) samples are to be processed at 5 min intervals. The test fixture, depicted in Figure 1 to Appendix A, shall be operated at 21°C (70°F).

8.4.2 Following the preconditioning procedure per section 8.4.1, 18.2 kg (40 lb) of standard contaminated HFC–134a are to be processed by the equipment.

8.5 Sample Requirements

8.5.1 Samples of the standard contaminated refrigerant from section 8.3.1 shall be processed as required in section 8.6 and shall be analyzed after said processing as defined in sections 8.7, 8.8, and section 8.9. Note exception for non-condensable gas determination in section 8.9.4.

8.6 Equipment Operating Ambient

8.6.1 The HFC–134a is to be cleaned to the purity level, as defined in SAE J2099, with the equipment operating in a stable ambient of 10, 21, and 49°C (50, 70, 120°F) while processing the samples as defined in section 8.4.

8.7 Quantitative Determination of Moisture

8.7.1 The recycled liquid phase sample of HFC–134a shall be analyzed for moisture content via Karl Fischer coulometric titration, or an equivalent method. The Karl Fischer apparatus is an instrument for precise determination of small amounts of water dissolved in liquid and/or gas samples.

8.7.2 In conducting this test, a weighed sample of 30 to 130 g is vaporized directly into the Karl Fischer anolyte. A coulometric titration is conducted and the results are reported as parts per million moisture (weight).

8.8 Determination of Percent Lubricant

8.8.1 The amount of lubricant in the recycled HFC–134a sample shall be determined via gravimetric analysis. The methodology must account for the hygroscopicity of the lubricant.

8.8.2 Following venting of noncondensable gases in accordance with the manufacturer's operating instructions, the refrigerant container shall be shaken 5 min prior to extracting samples for testing.

8.8.3 A weighed sample of 175 to 225 g of liquid HFC–134a is allowed to evaporate at room temperature. The percent lubricant is calculated from weights of the original sample and the residue remaining after evaporation.

8.9 Noncondensable Gases

8.9.1 The amount of noncondensable gases shall be determined by gas chromatography. A sample of vaporized refrigerant liquid shall be separated and analyzed by gas chromatography. A Porapak Q column at 130°C (266°F) and a hot wire detector may be used for the analysis.

8.9.2 This test shall be conducted on liquid phase samples of recycled refrigerant taken from a full container as defined in section 7.2 within 30 minutes following the proper venting of noncondensable gases.

8.9.3 The liquid phase samples in section 8.9.2 shall be vaporized completely prior to gas chromatographic analysis.

8.9.4 This test shall be conducted at 21 and 49°C (50 and 120°F) and may be performed in conjunction with the testing defined in section 8.6. The equipment shall process at least 13.6 kg (30 lb) of standard contami nated refrigerant for this test).

Rationale

Not applicable.

Relationship of Standard to ISO Standard

Not applicable.

Application

The purpose of this standard is to establish the specific minimum equipment requirements for recycling HFC–134a that has been directly removed from, and is intended for reuse in, mobile air-conditioning (A/C) systems.

Reference Section

SAE J2099—Standard of Purity for Recycled HFC–134a for Use in Mobile Air-Conditioning Systems

SAE J2196—Service Hoses for Automotive Air-Conditioning

SAE J2197—Service Hose Fittings for Automotive Air-Conditioning
CGA Pamphlet S–1.1—Pressure Relief Device Standard Part 1—Cylinders for Compressed Gases
UL 1769—Cylinder Valves
UL 1963—Refrigerant Recovery/Recycling Equipment
DOT Standard, 49 CFR 173.304—Shippers—General Requirements for Shipment and Packagings
II. SAE J2211, issued December, 1991.

Recommended Service Procedure for the Containment of HFC–134a

1. Scope

Refrigerant containment is an important part of servicing mobile air-conditioning systems. This procedure provides guidelines for technicians for servicing mobile air-conditioning systems and operating refrigerant recycling equipment designed for HFC–134a (described in SAE J2210).

2. References

2.1 Applicable Documents-The following publications form a part of this specification to the extent specified. The latest issue of SAE publications shall apply.

2.1.1 SAE Publications—Available from SAE, 400 Commonwealth Drive, Warrendale, PA 15096–0001.

SAE J2196—Service Hoses for Automotive Air-Conditioning
SAE J2197—Service Hose Fittings for Automotive Air-Conditioning
SAE J2210—Refrigerant Recycling Equipment for HFC–134a Mobile Air-Conditioning Systems
SAE J2219—Concerns to the Mobile Air-Conditioning Industry

2.2 Definitions

2.2.1 Recovery/Recycling (R/R) Unit—Refers to a single piece of equipment that performs both functions of recovery and recycling of refrigerants per SAE J2210.

2.2.2 Recovery—Refers to that portion of the R/R unit operation that removes the refrigerant from the mobile air-conditioning system and places it in the R/R unit storage container.

2.2.3 Recycling—Refers to that portion of the R/R unit operation that processes the refrigerant for reuse on the same job site to the purity specifications of SAE J2099.

3. Service Procedure

3.1 Connect the recycling unit service hoses, which shall have shutoff devices (*e.g.*, valves) within 30 cm (12 in) of the service ends, to the vehicle air-conditioning (A/C) service ports. Hoses shall conform to SAE J2196 and fittings shall conform to SAE J2197.

3.2 Operate the recycling equipment per the equipment manufacturer's recommended procedure.

3.2.1 Verify that the vehicle A/C system has refrigerant pressure. Do not attempt to recycle refrigerant from a discharged system as this will introduce air (noncondensable gas) into the recycling equipment which must later be removed by purging.

3.2.2 Begin the recycling process by removing the refrigerant from the vehicle A/C system. Continue the process until the system pressure has been reduced to a minimum of 102mm (4 in) of mercury below atmospheric pressure (*i.e.*, vacuum). If A/C components show evidence of icing, the component can be gently heated to facilitate refrigerant removal. With the recycling unit shut off for at least 5 minutes, check A/C system pressure. If this pressure has risen above vacuum (0 psig), additional recycler operation is required to remove the remaining refrigerant. Repeat the operation until the system pressure remains stable at vacuum for 2 minutes.

3.3 Close the valves in the service lines and then remove the service lines from the vehicle system. If the recovery equipment has automatic closing valves, be sure they are operating properly. Proceed with the repair/service.

3.4 Upon completion of refrigerant removal from the A/C system, determine the amount of lubricant removed during the process and replenish the system with new lubricant, which is identified on the A/C system label. Used lubricant should be discarded per applicable federal, state, and local requirements.

4. Service With a Manifold Gauge Set

4.1 High-side, low-side, and center service hoses must have shutoff devices (*e.g.*, valves) within 30 cm (12 in) of the service ends. Valves must be closed prior to hose removal from the A/C system to prevent refrigerant loss to the atmosphere.

4.2 During all service operations, service hose valves should be closed until connected to the vehicle A/C system or to the charging source to exclude air and/or contain the refrigerant.

4.3 When the manifold gauge set is disconnected from the A/C system, or when the center hose is moved to another device that cannot accept refrigerant pressure, the gauge set hoses should be attached to the recycling equipment to recover the refrigerant from the hoses.

5. Supplemental Refrigerant Checking Procedure for Stored Portable Containers

5.1 Certified recycling equipment and the accompanying recycling procedure, when properly followed, will deliver use-ready refrigerant. In the event that the full recycling procedure was not followed or the technician is unsure about the noncondensable gas content of a given tank of refrigerant, this procedure can be used to determine whether the recycled refrigerant container meets the specification for noncondensable gases (air). (Note: The use of refrigerant with excess air will result in higher system operating pressures and may cause A/C system damage.)

5.2 The container must be stored at a temperature of 18.3 °C (65 °F) or above for at least 12 hours, protected from direct sunlight.

5.3 Install a calibrated pressure gauge, with 6.9 kPa (1 psig) divisions, on the container and read container pressure.

5.4 With a calibrated thermometer, measure the air temperature within 10 cm (4 in) of the container surface.

5.5 Compare the observed container pressure and air temperature to the values given in Tables 1 and 2 to determine whether the container pressure is below the pressure limit given in the appropriate table. For example, at an air temperature of 21 °C (70 °F) the container pressure must not exceed 524 kPa (76 psig).

5.6 If the refrigerant in the container has been recycled and the container pressure is less than the limit in Tables 1 and 2, the refrigerant may be used.

5.7 If the refrigerant in the container has been recycled and the container pressure exceeds the limit in Tables 1 and 2, slowly vent, from the top of the container, a small amount of vapor into the recycle equipment until the pressure is less than the pressure shown in Tables 1 and 2.

5.8 If, after shaking the container and letting it stand for a few minutes, the container pressure still exceeds the pressure limit shown in Tables 1 and 2, the entire contents of the container shall be recycled.

TABLE 1.—MAXIMUM ALLOWABLE CONTAINER PRESSURE (METRIC)

Temp, C(F)	kPa	Temp, C(F)	kPa	Temp, C(F)	kPa	Temp, C(F)	kPa
18 (65)	476	26 (79)	621	34 (93)	793	42 (108)	1007
19 (66)	483	27 (81)	642	35 (95)	814	43 (109)	1027
20 (68)	503	28 (82)	655	36 (97)	841	44 (111)	1055
21 (70)	524	29 (84)	676	37 (99)	876	45 (113)	1089
22 (72)	545	30 (86)	703	38 (100)	889	46 (115)	1124
23 (73)	552	31 (88)	724	39 (102)	917	47 (117)	1158
24 (75)	572	32 (90)	752	40 (104)	945	48 (118)	1179

TABLE 1.—MAXIMUM ALLOWABLE CONTAINER PRESSURE (METRIC)—Continued

Temp, C(F)	kPa	Temp, C(F)	kPa	Temp, C(F)	kPa	Temp, C(F)	kPa
25 (77)	593	33 (91)	765	41 (106)	979	49 (120)	1214

TABLE 2.—MAXIMUM ALLOWABLE CONTAINER PRESSURE (ENGLISH)

Temp, F	psig	Temp, F	psig	Temp, F	psig	Temp, F	psig
65	69	79	90	93	115	107	144
66	70	80	91	94	117	108	146
67	71	81	93	95	118	109	149
68	73	82	95	96	120	110	151
69	74	83	96	97	122	111	153
70	76	84	98	98	125	112	156
71	77	85	100	99	127	113	158
72	79	86	102	100	129	114	160
73	80	87	103	101	131	115	163
74	82	88	105	102	133	116	165
75	83	89	107	103	135	117	168
76	85	90	109	104	137	118	171
77	86	91	111	105	139	119	173
78	88	92	113	106	142	120	176

6. Containers for Storage of Recycled Refrigerant

6.1 Recycled refrigerant should not be salvaged or stored in disposable containers (this is one common type of container in which new refrigerant is sold). Use only DOT 49 CFR or UL approved storage containers, specifically marked for HFC–134a, for recycled refrigerant.

6.2 Any container of recycled refrigerant that has been stored or transferred must be checked prior to use as defined in Section 5.

6.3 Evacuate the tanks to at least 635 mm Hg (25 in Hg) below atmospheric pressure (vacuum) prior to first use.

7. Transfer of Recycled Refrigerant

7.1 When external portable containers are used for transfer, the container must be evacuated to at least 635 mm (25 in Hg) below atmospheric pressure (vacuum) prior to transfer of the recycled refrigerant to the container. External portable containers must meet DOT and UL standards.

7.2 To prevent on-site overfilling when transferring to external containers, the safe filling level must be controlled by weight and must not exceed 60% of the container gross weight rating.

8. Safety Note for HFC–134a

8.1 HFC–134a has been shown to be nonflammable at ambient temperature and atmospheric pressure. However, recent tests under controlled conditions have indicated that, at pressures above atmospheric and with air concentrations greater than 60% by volume, HFC–134a can form combustible mixtures. While it is recognized that an ignition source is also required for combustion to occur, the presence of combustible mixtures is a potentially dangerous situation and should be avoided.

8.2 Under NO CIRCUMSTANCE should any equipment be pressure tested or leak tested with air/HFC–134a mixtures. Do not use compressed air (shop air) for leak detection in HFC–134a systems.

9. Disposal of Empty/Near Empty Containers

9.1 Since all refrigerant may not have been removed from disposable refrigerant containers during normal system charging procedures, empty/near empty container contents should be recycled prior to disposal of the container.

9.2 Attach the container to the recycling unit and remove the remaining refrigerant. When the container has been reduced from a pressure to vacuum, the container valve can be closed and the container can be removed from the unit. The container should be marked ''Empty'', after which it is ready for disposal.

III. SAE J2099, issued December, 1991.

Standard of Purity for Recycled HFC–134a for Use in Mobile Air Conditioning Systems

Foreword

The purpose of this standard is to establish the minimum level of purity required for recycled HFC–134a removed from, and intended for reuse in, mobile air-conditioning systems.

1. Scope

This standard applies to HFC–134a refrigerant used to service motor vehicle passenger compartment air-conditioning systems designed or retrofitted to use HFC–134a. Hermetically sealed, refrigerated cargo systems are not covered by this standard.

2. References

2.1 Applicable Documents—The following publications form a part of this specification to the extent specified. The latest issue of SAE publications shall apply.

2.1.1 SAE publications—Available from SAE, 400 Commonwealth Drive, Warrendale, PA 15096–0001.

SAE J2210—HFC–134a Recycling Equipment for Mobile Air-Conditioning Systems

SAE J2211—Recommended Service Procedure for the Containment of HFC–134a

3. Purity Specification

The refrigerant referred to in this standard shall have been directly removed from, and intended to be returned to, a mobile air-conditioning system. Contaminants in this recycled refrigerant shall be limited to moisture, refrigerant system lubricant, and noncondensable gases, which, when measured in the refrigerant liquid phase, shall not exceed the following levels:

3.1 Moisture—50 ppm by weight

3.2 Lubricant—500 ppm by weight

3.3 Noncondensable Gases (Air)—150 ppm by weight

4. Requirements for Recycle Equipment Used in Direct Mobile Air-Conditioning Service Operations

4.1 Such equipment shall meet J2210, which covers additional moisture, acid, and filter requirements.

5. Operation of the Recycle Equipment

Recycle equipment operation shall be in accord with SAE J2211.

Application

This Standard applies to HFC–134a refrigerant used to service motor vehicle passenger compartment air-conditioning systems designed or retrofitted to use HFC–134a. Hermetically sealed, refrigerated cargo systems are not covered by this standard.

Reference Section

SAE J2210—HFC–134a Recycling Equipment for Mobile Air-Conditioning Systems

SAE J2211—Recommended Service Procedure for the Containment of HFC–134a.

9. Appendix D is added to Subpart B to read as follows:

Appendix D to Subpart B—Standard for HFC–134a Recover-Only Equipment

SAE J2211, Recommended Service Procedure for Containment of HFC–134a, as set forth under Appendix C of this subpart, also applies to this Appendix D.

SAE J1732, issued December, 1994.

HFC–134a (R–134a) Extraction Equipment for Mobile Automotive Air-Conditioning Systems

Foreword

Appendix C established equipment specifications for on-site recovery and reuse of HFC–134a in air-conditioning systems. These specifications are for HFC–134a extraction only equipment that are intended to be used in conjunction with the on-site recycling equipment currently used at service facilities, or allow for off-site refrigerant reclamation.

1. Scope

The purpose of this standard is to provide equipment specification for only the recovery of HFC–134a refrigerant to be returned to a refrigerant reclamation facility that will process it to ARI Standard 700–93 or allow for recycling of the recovered refrigerant to SAE J2210 specifications by using Design Certified equipment of the same ownership. It is not acceptable that refrigerant removed from a mobile air conditioning system with this equipment be directly returned to a mobile air-conditioning system.

This information applies to equipment used to service automobiles, light trucks, and other vehicles with similar HFC–134a air conditioning systems.

2. References

2.1 Applicable Documents—The following publications form a part of this specification to the extent specified.

2.1.1 SAE Publications—Available from SAE, 400 Commonwealth Drive, Warrendale, PA 15096–0001.

SAE J639—Vehicle Service Coupling

SAE J2210—HFC–134a Recycling Equipment for Mobile Automotive Air Conditioning Systems

SAE J2196—Service Hoses for Automotive Air-Conditioning

SAE J2197—Service Hose Fittings for Automotive Air-Conditioning

2.1.2 ARI Publication—Available from Air Conditioning and Refrigerant Institute, 1501 Wilson Blvd. Sixth Floor, Arlington, VA 22209.

ARI 700–93—Specifications for Fluorocarbon Refrigerants

2.1.3 CGA Publications—Available from CGA, 1235 Jefferson Davis Highway, Arlington, VA 22202.

CGA Pamphlet S–1.1—Pressure Relief Device Standard

Part 1—Cylinders for Compressed Gases

2.1.4 DOT Publications—Available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

DOT Standard, 49 CFR 49 173.304—Shippers-General Requirements for Shipments and Packagings

2.1.5 UL Publications—Available from Underwriters Laboratories, 333 Pfingsten Road, Northbrook, IL 60062–2096.

UL 1769—Cylinder Valves

3. Specification and General Description

3.1 The equipment must be able to extract HFC–134a from a mobile air-conditioning system.

3.2 The equipment shall be suitable for use in an automotive service garage environment as defined in section 6.8.

3.3 Equipment Certification—The equipment shall be certified by Underwriters Laboratories or an equivalent certifying laboratory to meet this standard.

3.4 Label Requirements—The equipment shall have a label ''Design Certified by (Company Name) to meet SAE J1732 for use only with HFC–134a. The refrigerant from this equipment must be processed to ARI 700–93 specifications or to SAE J2210 specifications by using Design Certified equipment of the same ownership.'' The minimum letter size shall be bold type 3 mm in height.

4. Safety Requirements

4.1 The equipment must comply with applicable federal, state, and local requirements on equipment related to the handling of HFC–134a material. Safety precautions or notices or labels related to the safe operation of the equipment shall also be prominently displayed on the equipment and should state ''CAUTION—SHOULD BE OPERATED BY CERTIFIED PERSONNEL.'' The safety identification shall be located on the front near the controls.

4.2 The equipment must comply with applicable safety standards for electrical and mechanical requirements.

5. Operating Instructions

5.1 The equipment manufacturer must provide operating instructions that include information required by SAE J1629, necessary maintenance procedures, and source information for replacement parts and repair.

5.1.1 The instruction manual shall include the following information on the lubricant removed. Only new lubricant, as identified by the system manufacturer, should be replaced in the mobile air conditioning system. Removed lubricant from the system and/or the equipment shall be disposed of in accordance with the applicable federal, state, and local procedures and regulations.

5.2 The equipment must prominently display the manufacturer's name, address, the type of refrigerant it is designed to extract, a service telephone number, and any items that require maintenance or replacement that affect the proper operation of the equipment. Operation manuals must cover information for complete maintenance of the equipment to assure proper operation.

6. Functional Description

6.1 The equipment must be capable of ensuring removal of refrigerant from the system being serviced by reducing the system pressure to a minimum of 102 mm (4 in) of mercury below atmospheric pressure (*i.e.*, vacuum). To prevent system delayed outgassing, the unit must have a device that assures the refrigerant has been recovered from the air-conditioning system.

6.1.1 Testing laboratory certification of the equipment capability is required which shall process contaminated refrigerant samples at specific temperatures.

6.2 The equipment must be preconditioned by processing 13.6 kg (30 lb) of the standard contaminated HFC–134a at an ambient of 21°C (70°F) before starting the test cycle. Sample amounts are not to exceed 1.13 kg (2.5 lb) with sample amounts to be repeated every 5 minutes. The test fixture shown in Figure 1 to Appendix A of this subpart shall be operated at 21°C. Contaminated HFC–134a samples shall be processed at ambient temperatures of 10 and 49°C, without equipment shutting due to any safety devices employed in this equipment.

6.2.1 Contaminated HFC–134a sample

6.2.2 Standard contaminated HFC–134a refrigerant, 13.6 kg sample size, shall consist of liquid HFC–134a with 1300 ppm (by weight) moisture at 21°C and 45,000 ppm (by weight) of oil (polyalkylene glycol oil with 100 cs viscosity at 40°C or equivalent) and 1000 ppm by weight of noncondensable gases (air).

6.3 Portable refillable containers used in conjunction with this equipment must meet applicable DOT Standards.

6.3.1 The container color must be blue with a yellow top to identify that it contains used HFC–134a refrigerant. It must be permanently marked on the outside surface in black print at least 20 mm high ''DIRTY HFC–134a—DO NOT USE, MUST BE REPROCESSED''.

6.3.2 The portable refillable container shall have a ½ inch ACME thread.

6.3.3 During operation, the equipment shall provide overfill protection to assure that the storage container liquid fill does not exceed 80% of the tank's rated volume at 21°C per DOT Standard, 49 CFR 173.304 and the American Society of Mechanical Engineers.

6.4 Additional Storage Tank Requirements

6.4.1 The cylinder valve shall comply with UL 1769.

6.4.2 The pressure relief device shall comply with CGA Pamphlet S–1.1.

6.4.3 The container assembly shall be marked to indicate the first retest date, which shall be 5 years after date of manufacture. The marking shall indicate that retest must be performed every subsequent 5 years. The markings shall be in letters at least 6 mm high.

6.5 All flexible hoses must meet SAE J2196 for service hoses.

6.6 Service hoses must have shutoff devices located within 30 cm (12 in) of the connection point to the system being serviced to minimize introduction of noncondensable gases into the recovery equipment during connection and the release of the refrigerant during disconnection.

6.7 The equipment must be able to separate the lubricant from recovered refrigerant and accurately indicate the amount removed from the simulated automotive system during processing in 30 mL units.

6.7.1 The purpose of indicating the amount of lubricant removed is to ensure that a proper amount of new lubricant is returned to the mobile air conditioning system for compressor lubrication.

6.7.2 Refrigerant dissolved in this lubricant must be accounted for to prevent system lubricant overcharge of the mobile air-conditioning system.

6.8 The equipment must be capable of continuous operation in ambient temperatures of 10°C to 49°C and comply with 6.1 and 6.2.

7. For test validation, the equipment is to be operated according to the manufacturer's instructions.

Application

The purpose of this standard is to provide equipment specification for only the recovery of HFC–134a refrigerant to be returned to a refrigerant reclamation facility that will process it to ARI Standard 700–93 or allow for the recycling of the recovered refrigerant to SAE J2210 specifications by using Design Certified equipment of the same ownership. It is not acceptable that the refrigerant removed from a mobile air-conditioning system with this equipment be directly returned to a mobile air-conditioning system.

This information applies to equipment used to service automobiles, light trucks, and other vehicles with similar HFC–134a air-conditioning systems.

Reference Section

SAE J639—Vehicle Service Coupling

SAE J2210—HFC–134a Recycling Equipment for Mobile Automotive Air Conditioning Systems

SAE J2196—Service Hoses for Automotive Air-Conditioning

ARI 700–93—Specifications for Fluorocarbon Refrigerants

CGA Pamphlet S–1.1—Pressure Relief Device Standard Part 1—Cylinders for Compressed Gases

UL 1769—Cylinder Valves

49 CFR 173.304—Shippers—General Requirements for Shipment and Packagings

10. Appendix E is added to Subpart B to read as follows:

Appendix E to Subpart B—The Standard for Automotive Refrigerant Recycling Equipment Intended for Use With Both CFC–12 and HFC–134a

SAE J2211, Recommended Service Procedure for the Containment of HFC–134a, as set forth under Appendix C of this subpart, and SAE J1989, Recommended Service Procedure for the Containment of CFC–12, as set forth under Appendix A of this subpart, also apply to this Appendix E of this subpart.

SAE J1770, issued December, 1995.

Automotive Refrigerant Recycle Equipment Intended for Use With Both CFC–12 and HFC–134a

Foreword

The purpose of this standard is to establish specific minimum equipment requirements for automotive refrigerant recycling equipment intended for use with both CFC–12 and HFC–134a in a common refrigerant circuit. Establishing such specifications will assure that this equipment does not cross contaminate refrigerant above specified limits when used under normal operating conditions.

1. Scope

The purpose of this standard is to establish the specific minimum equipment intended for use with both CFC–12 and HFC–134a in a common refrigerant circuit that has been directly removed from, and is intended for reuse in, mobile air-conditioning (A/C) systems. This standard does not apply to equipment used for CFC–12 and HFC–134a having a common enclosure with separate circuits for each refrigerant.

2. References

2.1 Applicable Documents—The following publications form a part of this specification to the extent specified. The latest issue of SAE publications shall apply.

2.1.1 SAE Publications—Available from SAE, 400 Commonwealth Drive, Warrendale, PA 15096–0001.

SAE J2099—Standard of Purity for Recycled HFC–134a for Use in Mobile Air-Conditioning Systems

SAE 1991—Standard of Purity for Use in Mobile Air-Conditioning Systems

SAE J2196—Service Hoses for Automotive Air-Conditioning

SAE J2197—Service Hose Fittings for Automotive Air-Conditioning

SAE J2210—HFC–134a (R–134a) Recycling Equipment for Mobile A/C Systems

SAE J1990—Extraction and Recycling Equipment for Mobile A/C Systems

2.1.2 Compressed Gas Association (CGA) Publications—Available from CGA, 1235 Jefferson Davis Highway, Arlington, VA 22202.

CGA Pamphlet S–1.1—Pressure Relief Device Standard

Part 1—Cylinders for Compressed Gases

2.1.3 DOT Publications—Available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

2.1.4 UL Publications—Available from Underwriters Laboratories, 333 Pfingsten Road, Northbrook, IL 60062–2096.

UL 1769—Cylinder Valves

UL 1963—Refrigerant Recovery/Recycling Equipment

3. Specification and General Description

3.1 The equipment shall be suitable for use in an automotive service garage environment and be capable of continuous operation in ambients from 10 to 49°C.

3.2 The equipment must be certified that it meets this specification by Underwriters Laboratories Inc. (UL), or by an equivalent Nationally Recognized Testing Laboratory (NRTL).

3.3 The equipment shall have a label which states ''Design Certified by (Certifying Agent) to meet SAE J1770 for recycling CFC–12 and HFC–134a using common refrigerant circuits'', in bold-type letters a minimum of 3 mm in height.

4. Equipment Requirements

4.1 General

4.1.1 The equipment shall be capable of preventing cross contamination to the level required by Section 9.2.1.G before an operation involving a different refrigerant can begin. The equipment must prevent initiation of the recovery operation if the equipment is not set up properly.

4.1.2 If an operator action is required to clear the unit prior to reconnecting for a different refrigerant, the equipment shall be provided with a means which indicates which refrigerant was last processed.

4.1.3 Means shall be provided to prevent recovery from both an CFC–12 and HFC–134a mobile air conditioning system concurrently.

4.1.4 Transfer of recycled refrigerant—Recycled refrigerant for recharging and transfer shall be taken from the liquid phase only.

4.2 Seat Leakage Test

4.2.1 Valves, including electrically operated solenoid valves, that are used to isolate CFC–12 and HFC–134a refrigerant circuits, shall have a seat leakage rate not exceeding 15 g/yr (½ oz/yr) before and after 100,000 cycles of operation. This Endurance Test shall be conducted with HFC–134a at maximum operating pressure as determined by sections 8.1 and 8.2. The Seat Leakage Test shall be performed at 1.5 times this pressure at an ambient of 24°C.

4.3 Interlocks

4.3.1 Electrical interlock devices used to prevent cross contamination of refrigerant shall be operated for 100,000 cycles and there shall be no failure that would permit cross contamination of refrigerant. Solid state inter lock devices shall comply with the Transient Overvoltage Test and the Fast Transient (Electric Noise) Test contained in the Standard for Tests for Safety Related

Controls Employing Solid-State Devices, UL 991.

4.4 Noncondensable Gases

4.4.1 The equipment shall either automatically purge noncondensables (NCGs) if the acceptable level is exceeded or incorporate a device that indicates to the operator the NCG level has been exceeded. A pressure gauge used to indicate an NCG level shall be readable in 1 psig increments. NCG removal must be part of the normal operation of the equipment and instructions must be provided to enable the task to be accomplished within 30 minutes.

4.4.2 Refrigerant loss from noncondensable gas purging, oil removal, and refrigerant clearing shall not exceed more than 5 percent by weight of the total amount of refrigerant through the equipment as detailed in Sections 8.1, 8.2, and 9.2.

4.5 Filter

4.5.1 A 15 micron filter, or other equivalent means, to remove particulates of 15 micrometers spherical diameter or greater shall be located before any manual electrically operated valves that may cause cross contamination.

4.6 Moisture and Acid

4.6.1 The equipment shall incorporate a desiccant package that must be replaced before saturated with moisture, and whose acid capacity is at least 5% by weight of the dry desiccant.

4.6.2 The equipment shall be provided with a moisture detection means that will reliably indicate when moisture in the HFC–134a exceeds 50 ppm, or in the CFC–12 exceeds 15 ppm, and requires the filter/drier replacement.

5. Operating Instructions

5.1 The equipment manufacturer must provide operating instructions, including proper attainment of vehicle system vacuum (*i.e.*, when to stop the extraction process, and also to stop the extraction process if it is noticed that the A/C system being serviced has a leak), filter/desiccant replacement, and purging of noncondensable gases (air). The instructions shall indicate that the correct sequence of operation be followed so that the equipment can properly remove contaminates to the acceptable level. Also to be included are any other necessary maintenance procedures, source information for replacement parts and repair, and safety precautions.

5.2 The equipment must prominently display the manufacturer's name, address, the type of refrigerant (CFC–12 and HFC–134a), a service telephone number, and the part number for the replacement filter/drier. Operation manuals must cover information for complete maintenance of the equipment to assure proper operation.

6. Safety Requirements

6.1 The equipment must comply with applicable federal, state, and local requirements on equipment related to handling CFC–12 and HFC–134a material. Safety precautions or notices related to the safe operation of the equipment shall be prominently displayed on the equipment and should also state ''CAUTION—SHOULD BE OPERATED BY QUALIFIED PERSONNEL''.

6.2 HFC–134a has been shown to be nonflammable at ambient temperature and atmospheric pressure. The following statement shall be in the operating manual: ''Caution: HFC–134a service equipment or vehicle A/C systems should not be pressure tested or leak tested with compressed air. Some mixtures of air and HFC–134a have been shown to be combustible at elevated pressures (when contained in a pipe or tank). These mixtures may be potentially dangerous, causing injury or property damage. Additional health and safety information may be obtained from refrigerant and lubricant manufacturers.''

7. Functional Description

7.1 General

7.1.1 The equipment must be capable of ensuring recovery of the CFC–12 and HFC–134a from the system being serviced, by reducing the system to a minimum of 102 mm of mercury below atmospheric pressure (*i.e.*, vacuum).

7.1.2 The equipment must be compatible with leak detection material that may be present in the mobile A/C system.

7.2 Shut Off Device

7.2.1 To prevent overcharge, the equipment must be equipped to protect the tank used to store the recycled refrigerant with a shutoff device and a mechanical pressure relief valve.

7.3 Storage Tanks

7.3.1 Portable refillable tanks or containers shall be supplied with this equipment and must be labeled ''HFC–134a'' or ''CFC–12'' as appropriate, meet applicable Department of Transportation (DOT) or NRTL's Standards and be adaptable to existing refrigerant service and charging equipment.

7.3.2 The cylinder valve shall comply with the Standard for Cylinder Valves, UL 1769.

7.3.3 The pressure relief device shall comply with the Pressure Relief Device Standard Part 1—Cylinders for Compressed Gases, CGA Pamphlet S–1.1.

7.3.4 The tank assembly shall be marked to indicate the first retest date, which shall be 5 years after the date of manufacture. The marking shall indicate that retest must be performed every subsequent 5 years. The marking shall be in letters at least 6 mm high.

7.4 Overfill Protection

7.4.1 During operation, the equipment must provide overfill protection to assure that during filling or transfer, the tank or storage container cannot exceed 80% of volume at 21.1°C of its maximum rating as defined by DOT standards, 49 CFR 173.304 and American Society of Mechanical Engineers.

7.5 Hoses and Connections

7.5.1 Separate inlet and outlet hoses with fittings and separate connections shall be provided for each refrigerant circuit.

7.5.2 All flexible hoses and fittings must meet SAE J2196 (for CFC–12) and SAE J2197 (for HFC–134a).

7.5.3 Service hoses must have shutoff devices located within 30 cm of the connection point to the system being serviced.

7.6 Lubricant Separation

7.6.1 The equipment must be able to separate the lubricant from the removed refrigerant and accurately indicate the amount of lubricant removed during the process, in 30 mL (1 fl oz) units. Refrigerant dissolves in lubricant and, as a result, increases the volume of the recovered lubricant sample. This creates the illusion that more lubricant has been recovered that actually has been. The equipment lubricant measuring system must take into account such dissolved refrigerant removed from the A/C system being serviced to prevent overcharging the vehicle system with lubricant.

(**Note:** Use only new lubricant to replace the amount removed the recycling process. Used lubricant should be discarded per applicable federal, state and local requirements.)

7.6.2 The equipment must be provided with some means, such as a lockout device, which will prevent initiation of the recovery operation after switching to the other refrigerant, if the lubricant has not been drained from the oil separator.

8. Testing

8.0 Equipment shall be tested in sequence as noted in sections 8.1, 8.2 and 9.2. The filter/drier may be replaced only as noted by section 4.6.2.

8.1 CFC–12 Recycling Cycle

8.1.1 The maximum operating pressure of the equipment shall be determined when recycling CFC–12 while conducting the following tests. This pressure is needed for the Seat Leakage Test, Section 4.2.

8.1.2 The equipment must be preconditioned with 13.6 kg of the standard contaminated CFC–12 (see section 8.1.2a) at an ambient of 21°C before starting the test cycle. Sample amounts shall be 1.13 kg with sample amounts to be repeated every 5 minutes. The sample method fixture, defined in Figure 1 to Appendix A, shall be operated at 21°C.

8.1.2a Standard contaminated CFC–12 refrigerant shall consist of liquid CFC–12 with 100 ppm (by weight) moisture at 21•C and 45,000 ppm (by weight) mineral oil 525 suspension viscosity nominal and 770 ppm by weight of noncondensable gases (air).

8.1.3 The high moisture contaminated sample shall consist of CFC–12 vapor with 1000 ppm (by weight) moisture.

8.1.4 The high oil contaminated sample shall consist of CFC–12 with 200,000 ppm (by weight) mineral oil 525 suspension viscosity nominal.

8.1.5 After preconditioning as stated in section 8.1.2, the test cycle is started,

processing the following contaminated samples through the equipment.

A. 13.6 kg (1.13 kg per batch) of standard contaminated CFC–12.

B. 1 kg of high oil contaminated CFC–12.

C. 4.5 kg (1.13 kg per batch) of standard contaminated CFC–12.

D. 1 kg of high moisture contaminated CFC–12.

8.1.6 The CFC–12 is to be cleaned to the minimum purity level, as defined in SAE J1991, with the equipment operating in a stable ambient of 10, 21, and 49•C and processing the samples as defined in section 8.1.5.

8.2 HFC–134a Recycling Cycle

8.2.1 The maximum operating pressure of the equipment shall be determined when recycling HFC–134a while conducting the following tests. This pressure is needed for the Seat Leakage Test, Section 4.2.

8.2.2 The equipment must be preconditioned by processing 13.6 kg of the standard contaminated HFC–134a (see section 8.2.2a) at an ambient of 21°C before starting the test cycle. 1.13 kg samples are to be processed at 5 minute intervals. The text fixture shown in Figure 1 to Appendix A shall be operated at 21°C.

8.2.2a The standard contaminated refrigerant shall consist of liquid HFC–134a with 1300 ppm (by weight) moisture (equivalent to saturation at 38°[100°F]), 45,000 ppm (by weight) HFC–134a compatible lubricant, and 1000 ppm (by weight) of noncondensable gases (air).

8.2.2b The HFC–134a compatible lubricant referred to in section 8.2.2a shall be a polyalkylene glycol based synthetic lubricant or equivalent, which shall contain no more than 1000 ppm by weight of moisture.

8.2.3 Following the preconditioning procedure per section 8.2.2, 18.2 kg of standard contaminated HFC–134a are to be processed by the equipment at each stable ambient temperature of 10, 21, and 49°C.

8.2.4 The HFC–134a is to be cleaned to the purity level, as defined in SAE J2099.

9. Refrigerant Cross Contamination Test

9.1 General

9.1.1 For test validation, the equipment is to be operated according to the manufacturer's instruction.

9.1.2 The equipment shall clean the contaminated CFC–12 refrigerant to the minimum purity level as defined in Appendix A, when tested in accordance with the requirements in section 8.1.

9.1.3 The equipment shall clean the contaminated HFC–134a refrigerant to the purity level defined in Appendix C, when tested in accordance with the requirements in section 8.2.

9.2 Test Cycle

9.2.1 The following method shall be used after the tests and requirements in Sections 8.1 and 8.2, respectively, are completed. Following the manufacturer's instructions, the equipment shall be cleared of HFC–134a, prior to beginning step A. The only refrigerant used for this is noted in steps A, C, and E of section 9.2.1. The test fixture shown in Figure 1 to Appendix A shall be used and the test shall be conducted at 10, 21, and 49°C ambients.

A. A 1.13 kg standard contaminated sample of CFC–12 (see section 8.1.2a) shall be processed by the equipment.

B. Follow manufacturer's instructions to clear the equipment of CFC–12 before processing HFC–134a.

C. Process a 1.13 kg, standard contaminated sample of HFC–134a (see section 8.2.2a) through the equipment.

D. Follow manufacturer's instructions to clear the equipment of HFC–134a before processing CFC–12.

E. Process a 1.13 kg standard contaminated sample of CFC–12 (see section 8.1.2a) through the equipment.

F. Follow manufacturer's instructions to clear the equipment of CFC–12.

G. The amount of cross contaminated refrigerant, as determined by gas chromatography, in samples processed during steps C and E of section 9.2.1., shall not exceed 0.5 percent by weight.

10. Sample Analysis

10.1 General

10.1.1 The processed contaminated samples shall be analyzed according to the following procedure.

10.2 Quantitative Determination of Moisture

10.2.1 The recycled liquid phase sample of refrigerant shall be analyzed for moisture content via Karl Fischer coulometer titration or an equivalent method. The Karl Fischer apparatus is an instrument for precise determination of small amounts of water dissolved in liquid and/or gas samples.

10.2.2 In conducting the test, a weighed sample of 30 to 130 g is vaporized directly into the Karl Fischer anolyte. A coulometer titration is conducted and the results are calculated and displayed as parts per million moisture (weight).

10.3 Determination of Percent Lubricant

10.3.1 The amount of lubricant in the recycled sample of refrigerant/lubricant is to be determined by gravimetric analysis.

10.3.2 Following venting of noncondensable, in accordance with the manufacturer's operating instructions, the refrigerant container shall be shaken for 5 minutes prior to extracting samples for test.

10.3.3 A weighed sample of 175 to 225 g of liquid refrigerant/lubricant is allowed to evaporate at room temperature. The percent lubricant is to be calculated from the weight of the original sample and the residue remaining after the evaporation.

10.4 Noncondensable Gas

10.4.1 The amount of noncondensable gas is to be determined by gas chromatography. A sample of vaporized refrigerant liquid shall be separated and analyzed by gas chromatography. A Propak Q column at 130° C and a hot wire detector may be used for analysis.

10.4.2 This test shall be conducted on liquid phase samples of recycled refrigerant taken from a full container as defined in 7.4 within 30 minutes following the proper venting of noncondensable gases.

10.4.3 The samples shall be shaken for at least 15 minutes prior to testing while at a temperature of 24° C ± 2.8• C.

10.5 Refrigerant Cross Contamination

10.5.1 The amount of cross contamination of CFC–12 in HFC–134a or HFC–134a in CFC–12 shall not exceed 0.5 percent by weight as determined by gas chromatography. A sample of vaporized refrigerant liquid shall be separated and analyzed by gas chromatography. A 1% SP–1000 on Carbopack B (60/80 mesh) column may be used for the analysis.

11. Appendix F is added to Subpart B to read as follows:

Appendix F to Subpart B of Part 82—Standard for Recover-Only Equipment That Extracts a Single, Specific Refrigerant Other Than CFC–12 or HFC–134a

Foreword

These specifications are for equipment that recover, but does not recycle, any single, specific automotive refrigerant other than CFC–12 or HFC–134a, including a blend refrigerant.

1. Scope

The purpose of this standard is to provide equipment specifications for the recovery of any single, specific refrigerant other than CFC–12 or HFC–134a, including a blend refrigerant, which are either (1) to be returned to a refrigerant reclamation facility that will process the refrigerant to ARI Standard 700–93 or equivalent new product specifications at a minimum, or (2) to be recycled in approved refrigerant recycling equipment, or (3) to be destroyed. This standard applies to equipment used to service automobiles, light trucks, and other vehicles with similar air conditioning systems.

2. References

2.1 Applicable Documents—The following publications form a part of this specification to the extent specified. The latest issue of SAE publications shall apply.

2.1.1 SAE Publications—Available from SAE, 400 Commonwealth Drive, Warrendale, PA 15096–0001. SAE J639—Vehicle Service Coupling. SAE J2196—Service Hoses for Automotive Air-Conditioning (fittings modified)

2.1.2 ARI Publication—Available from Air Conditioning and Refrigeration Institute, 1501 Wilson Boulevard, Sixth Floor, Arlington, VA 22209. ARI 700–93—Specifications for Fluorocarbon Refrigerants.

2.1.3 Compressed Gas Association (CGA) Publications—Available from CGA, 1235 Jefferson Davis Highway, Arlington, VA 22202. CGA Pamphlet S–1.1—Pressure Relief Device Standard Part 1—Cylinders for Compressed Gases.

2.1.4 DOT Publications—Available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

DOT Standard, 49 CFR 173.304—Shippers—General Requirements for Shipments and Packagings.

2.1.5 UL Publications—Available from Underwriters Laboratories, 333 Pfingsten Road, Northbrook, IL 60062–2096.

UL 1769—Cylinder Valves.

UL 1963—Refrigerant Recovery Recycling Equipment.

3. Specifications and General Description

3.1 The equipment must be able to extract from a mobile air conditioning system the refrigerant other than CFC–12 or HFC–134a to which the equipment is dedicated.

3.2 The equipment shall be suitable for use in an automotive service garage environment as defined in section 6.8.

3.3 The equipment discharge or transfer fitting shall be unique to prevent the unintentional use of the extracted refrigerant for recharging auto air conditioners.

3.4 Equipment Certification-The equipment shall be certified by Underwriters Laboratories or an—equivalent certifying laboratory to meet this standard.

3.5 Label Requirements—The equipment shall have a label ''Designed Certified by (Company Name) to meet EPA requirements for use only with (the applicable refrigerant). The refrigerant from this equipment must be processed to ARI 700–93 specifications or equivalent new product specifications before reuse in a mobile air-conditioning system.'' The minimum letter size shall be bold type 3 mm in height.

4. Safety Requirements

4.1 The equipment must comply with applicable federal, state, and local requirements on equipment related to the handling of the applicable refrigerant material. Safety precautions or notices or labels related to the safe operation of the equipment shall also be prominently displayed on the equipment and should state ''CAUTION—SHOULD BE OPERATED BY CERTIFIED PERSONNEL.'' The safety identification shall be located on the front near the controls.

4.2 The equipment must comply with applicable safety standards for electrical and mechanical requirements.

5. Operating Instructions

5.1 The equipment manufacturer must provide operating instructions that include information equivalent to that required by SAE J1629, necessary maintenance procedures, and source information for replacement parts and repair.

5.1.1 The instruction manual shall include the following information on the lubricant removed: Only new lubricant, as identified by the system manufacturer, should be replaced in the air conditioning system. Removed lubricant from the system and/or the equipment shall be disposed on in accordance with the applicable federal, state, and local procedures and regulations.

5.2 The equipment must prominently display the manufacturer's name, address, the type of refrigerant it is designed to extract, a service telephone number, and any items that require maintenance or replacement that affect the proper operation of the equipment. Operation manuals must cover information for complete maintenance of the equipment to assure proper operation.

6.1 Functional Description

6.1 The equipment must be capable of ensuring removal of refrigerant from the system being serviced by reducing the system pressure to a minimum of 102 mm (4 in) of mercury below atmospheric pressure (*i.e.*, to a vacuum). To prevent system delayed outgassing, the unit must have a device that assures that the refrigerant has been recovered from the air-conditioning system.

6.1.1 Testing laboratory certification of the equipment capability is required which shall process contaminated refrigerant samples at specific temperatures.

6.2 The equipment must be preconditioned by processing 13.6 kg (30 lb) of the standard contaminated refrigerant at an ambient of 21°C (70°F) before starting the test cycle. Sample amounts are not to exceed 1.13 kg (2.5 lb) with sample amounts to be processed at 5 min. intervals. The test method fixture, depicted in Figure 1 to appendix A of this subpart, shall be operated at 21°C (70°F). Contaminated refrigerant samples shall be processed at ambient temperatures of 10 and 49° C, without equipment shutting due to any safety devices employed in this equipment.

6.2.1 Standard contaminated refrigerant, 13.6 kg (30 lb) sample size, shall consist of liquid refrigerant with 1000 ppm (by weight) moisture at 21°C and 45,000 ppm (by weight) of oil (total of one-third mineral oil 525 suspension nominal, one-third PAG with 100 cSt viscosity at 40°C or equivalent, and one-third POE with 68 cSt viscosity at 40°C or equivalent) and 1000 ppm by weight of noncondensable gases (air). Refrigerant shall be identified prior to the recovery process to ±2% of the original manufacturer's formulation submitted to, and accepted by, EPA under its Significant New Alternatives Policy program, with the exception that any flammable components shall be identified to ±1%.

6.3 Portable refillable containers used in conjunction with this equipment must meet applicable DOT Standards.

6.3.1 The container color must be gray with a yellow top to identify that it contains used refrigerant. It must be permanently marked on the outside surface in black print at least 20 mm high ''DIRTY [NAME OF REFRIGERANT]—DO NOT USE, MUST BE PROCESSED''.

6.3.2 The portable refillable container shall have a unique thread connection for the specific refrigerant.

6.3.3 During operation, the equipment shall provide overfill protection to assure that the storage container liquid fill does not exceed 80% of the tank's rated volume at 21°C per DOT Standard, 49 CFR 173.304, and the American Society of Mechanical Engineers.

6.4 Additional Storage Tank Requirements

6.4.1 The cylinder valve shall comply with UL 1769.

6.4.2 The pressure relief device shall comply with CGA Pamphlet S–1.1.

6.4.3 The container assembly shall be marked to indicate the first retest date, which shall be 5 years after date of manufacture. The marking shall indicate that retest must be performed every subsequent 5 years. The marking shall be in letters at least 6 mm high.

6.5 All flexible hoses must meet SAE J2196 for service hoses except that fittings shall be unique to the applicable refrigerant.

6.6 Service hoses must have shutoff devices located within 30 cm of the connection point to the system being serviced to minimize introduction of noncondensable gases into the recovery equipment during connection and the release of the refrigerant during disconnection.

6.7 The equipment must be able to separate the lubricant from the recovered refrigerant and accurately indicate the amount removed from the simulated automotive system during processing in 30 mL units.

6.7.1 The purpose of indicating the amount of lubricant is to ensure that a proper amount of new lubricant is returned to the mobile air conditioning system for compressor lubrication.

6.7.2 Refrigerant dissolved in this lubricant must be accounted for to prevent system lubricant overcharge of the mobile air-conditioning system.

6.8 The equipment must be capable of continuous operation in temperatures of 10 to 49 °C and must comply with 6.1 and 6.2.

7. For test validation, the equipment is to be operated according to the manufacturer's instructions.

Application

The purpose of this standard is to provide equipment specifications for the recovery of any refrigerant other than CFC–12 or HFC–134a for return to a refrigerant reclamation facility that will process it to ARI Standard 700–93 (or for recycling in other EPA approved recycling equipment, in the event that EPA in the future designates a standard for equipment capable of recycling refrigerants other than CFC–12 or HFC–134a).

Reference Section

SAE J639—Vehicle Service Coupling

SAE J2196—Service Hoses for Automotive Air-Conditioning

ARI 700–93—Specifications for Fluorocarbon Refrigerants

CGA Pamphlet S–1.1—Pressure Relief Device Standard Part 1—Cylinders for Compressed Gases
UL 1769—Cylinder Valves
49 CFR 173.304—Shippers—General Requirements for Shipment and Packagings

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Tuesday
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Part IV

Department of Housing and Urban Development

24 CFR Part 81

The Secretary of HUD's Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac); Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 81

[Docket No. FR–4297–A–01]

RIN 2501–AC41

The Secretary of HUD's Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac); Advance Notice of Proposed Rulemaking

AGENCY: Office of the Secretary, HUD.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: Through this notice HUD seeks comments from the public regarding a possible future proposed rule on non-mortgage investments to amend HUD's regulations at 24 CFR Part 81 governing the Federal Home Loan Mortgage Corporation (Freddie Mac) and Federal National Mortgage Association (Fannie Mae) (both are known as Government Sponsored Enterprises or GSEs). Under their respective Charters, the GSEs have broad authority to invest their funds. The Secretary of HUD, however, has general regulatory power over the GSEs to ensure that the purposes of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, the Federal National Mortgage Association Charter Act, and the Federal Home Loan Mortgage Corporation Act are accomplished. HUD's current GSE regulations do not contain specific provisions concerning non-mortgage investments by the GSEs. Accordingly, HUD seeks the public's comments regarding possible regulations concerning these investments. Such comments may include, but should not be limited to, whether regulations should be issued governing the GSEs' non-mortgage investments and, if so, what specific requirements should be considered for such regulations including reporting of non-mortgage investments and any limits on such investments. This notice solicits public comments on this subject prior to publication of a possible proposed rule.

COMMENT DUE DATE: Deadline for comments on this Notice, including comments on the proposed information collection requirements: March 30, 1997.

ADDRESSES: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each response submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. Eastern Time, weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Janet Tasker, Director, Office of Government Sponsored Enterprise Oversight, Room 6154, Department of Housing and Urban Development, Washington, DC 20410; telephone (202) 708–2224; or (for legal questions) Kenneth A. Markison, Assistant General Counsel for GSE/RESPA, Room 9262, Department of Housing and Urban Development, Washington, DC 20410; telephone (202) 708–1550. (These are not toll free numbers.) Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339, which is a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

The GSEs have authority to invest under their respective Charters. Fannie Mae's investment authority is contained in section 303(d) of its Charter Act (the Federal National Mortgage Association Charter Act, 12 U.S.C. 1716–1723h) and Freddie Mac's authority is based on provisions of its Charter Act at section 309(a) (the Federal Home Loan Mortgage Corporation Act, 12 U.S.C. 1451–1459).

The Secretary has general regulatory power over both GSEs. When Fannie Mae was first chartered as a GSE in 1968, the Secretary was given general regulatory power over Fannie Mae under its Charter Act, a power that the Senate report accompanying the Charter Act characterized as ''plenary''. S. Rep. No. 90–1123, at 82 n. 33 (1968). Section 731(c) of the Financial Institutions Reform Recovery and Enforcement Act (FIRREA), Public Law 101–73, Approved August 9, 1989, amended the Freddie Mac Charter Act at 12 U.S.C. 1451 to grant the Secretary general regulatory power over Freddie Mac.

In 1992, under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA) (12 U.S.C. 4501–4641), Congress affirmed the Secretary's general regulatory power and conferred regulatory power on the Director of the Office of Federal Housing Enterprise Oversight for matters involving the GSEs' financial safety and soundness. FHEFSSA provides at 12 U.S.C. 4541:

> Except for the authority of the Director of the Office of Federal Housing Enterprise Oversight * * * and all other matters relating to the safety and soundness of the enterprises, the Secretary of Housing and Urban Development shall have general regulatory power over each enterprise and shall make such rules and regulations as shall be necessary and proper to ensure that this part and the purposes of the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act are accomplished.
>
> Under the GSEs' Charters, the GSEs' purposes are to:
>
> (1) Provide stability in the secondary market for residential mortgages;
>
> (2) Respond appropriately to the private capital market;
>
> (3) Provide ongoing assistance to the secondary market for residential mortgages (including activities relating to mortgages on housing for low-and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing; and
>
> (4) Promote access to mortgage credit throughout the Nation (including central cities, rural areas, and other underserved areas) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing.[1]

In enacting FHEFSSA, Congress affirmed that ''[a]ll enterprise activities should conform with the Charter Act purposes of the enterprises.'' Senate Report on FHEFSSA, S. Rep. No. 102–282, at 15 (1992) (''Senate Report''). The Senate Report on FHEFSSA stated in part:

> * * * [T]he authority to ensure that the purposes of the Charter Acts are accomplished gives the Director and Secretary the ability to prevent any activities that are clearly inconsistent with the purposes for which these enterprises were created and which they continue to serve * * *

Congress has indicated that HUD should not become involved in a GSE's ''internal affairs such as personnel, salary, and other usual corporate matters except where the exercise of such powers is * * * otherwise necessary to ensure that the purposes of the Charter Act are carried out.'' S. Rept. No. 1123, 90th Cong. 2d. Sess. p. 82 (1968).

Earlier this year, as a result of GSE non-mortgage investment activities, Chairman James Leach of the House Committee on Banking and Financial Services requested that the Secretary review the GSEs' non-mortgage investments. Chairman Leach also asked the General Accounting Office to investigate these investments. GAO's

[1] Sections 301(b) of the Freddie Mac Act and 301 of the Fannie Mae Charter Act.

response to Chairman Leach concluded in part, in relation to the GSEs' investment powers, that HUD's regulatory authority ''includes the power, at a minimum to determine whether an enterprise activity conflicts with the statutory mission and to respond appropriately.'' See Housing Enterprises: Investment Authority, Policies and Practices, B–277287, June 27, 1997, p. 14.

HUD understands that both GSEs have investment policies that specify permissible credit ratings, maturities and concentration limits. Non-mortgage investments constituted about 16 percent of the on-balance sheet assets of Fannie Mae and 11 percent of Freddie Mac's as of the end of 1996. Over half of Freddie Mac's non-mortgage investments and over 40 percent of Fannie Mae's were short-term investments in cash, cash equivalents, term federal funds and eurodollar deposits. The GSEs have indicated that their principal reasons for holding non-mortgage investments are cash management and as an investment vehicle to employ capital for future demand to fund residential mortgages.

Discussion

With respect to non-mortgage investments by the GSEs, the Secretary seeks to ensure that in carrying out its regulatory responsibility, the Government has the necessary tools to ascertain and ensure that the purposes of the Charter Acts are accomplished. Accordingly, HUD is considering issuing regulations that implement its programmatic responsibilities relative to the GSEs' non-mortgage investments to ensure that the purposes of the Charter Acts are accomplished. While the Secretary does not support or seek intrusive or unnecessary regulation, it may be necessary to initiate further rulemaking to ensure that the GSEs' Charter purposes are accomplished. Accordingly, HUD is asking for comments on non-mortgage investments by the GSEs and options regarding the possible regulation of these investments as follows:

1. Need for Regulations Governing GSE Non-Mortgage Investments

- Are regulations governing the GSEs' non-mortgage investments necessary and appropriate?

2. Purposes of GSE Non-Mortgage Investments

- For what purposes is it legitimate for Fannie Mae or Freddie Mac to hold non-mortgage investments, consistent with their charter purposes?

3. Establishing Restrictions on GSE Non-Mortgage Investments

- Consistent with its oversight responsibilities, should HUD establish general restrictions on the GSEs' non-mortgage investments, for example, limiting the GSEs only to those investments which do not conflict with their ability to ensure that the purposes of the Charter Acts are accomplished or to those relatively short term investments which are necessary for liquidity and cash management purposes? If HUD were to establish general or even more specific restrictions, what should they provide?
- Should HUD establish numerical/percentage of asset limits on the GSEs' non-mortgage investments? Commenters should indicate the legal basis and justification in support of how particular limits suggested are appropriate to ensure that the purposes of the Charter Acts are accomplished.

4. Establishing Standards for GSE Non-Mortgage Investments

- What criteria would be reasonable and feasible for HUD to employ to distinguish mortgage-related investments from other investments?
- What would be a reasonable and feasible basis for HUD to use to limit the size (in dollars or relative to mortgage investments) and/or type of Fannie Mae's and Freddie Mac's short term and/or long term non-mortgage investment holdings?
- Should HUD prohibit the GSEs from borrowing for the purpose of reinvesting the proceeds in non-mortgage investments in order to profit on the net yield or spread? If so, how should a restriction be formulated and what would be its legal basis?

5. Monitoring of GSE Non-Mortgage Investments

- What methods should HUD employ to monitor the GSEs non-mortgage investment holdings?

6. Reporting of GSE Non-Mortgage Investments

- Under current rules, HUD may request reports from the GSEs whenever the Secretary determines that a report is appropriate to carry out its regulatory activities under the Charter Act or FHEFSSA. In order to ensure regular reports on GSE non-mortgage investments, what, if any, specific requirements should HUD establish in its reporting rules concerning non-mortgage investments by the GSEs?

Dated: December 19, 1997.

Andrew Cuomo,

Secretary.

[FR Doc. 97–33731 Filed 12–29–97; 8:45 am]

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federal register

Tuesday
December 30, 1997

Part V

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 3

Federal Reserve System

12 CFR Parts 208 and 225

Federal Deposit Insurance Corporation

12 CFR Part 325

Risk-Based Capital Standards: Market Risk; Interim Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 97–25]

RIN 1557–AB14

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–0996]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AC14

Risk-Based Capital Standards: Market Risk

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; and Federal Deposit Insurance Corporation.

ACTION: Joint interim rule with request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the Agencies) are amending their respective risk-based capital standards for market risk applicable to certain banks and bank holding companies with significant trading activities. The amendment eliminates the requirement that when an institution measures specific risk using its internal model, the total capital charge for specific risk must equal at least 50 percent of the standard specific risk capital charge. The amendment implements a revision to the Basle Accord that permits such treatment for an institution whose internal model adequately measures specific risk. The rule will reduce regulatory burden for institutions with qualifying internal models because they will no longer be required to calculate a standard specific risk capital charge.

DATES: This interim rule is effective December 31, 1997. Comments must be received by March 2, 1998.

ADDRESSES: Comments should be directed to:

OCC: Comments may be submitted to Docket No. 97–25, Communications Division, Third Floor, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington DC 20219. Comments will be available for inspection and photocopying at that address. In addition, comments may be sent by facsimile transmission to FAX number (202) 874–5274, or by electronic mail to regs.comment@occ.treas.gov.

Board: Comments directed to the Board should refer to Docket No. R–0996 and may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington DC 20551. Comments addressed to the attention of Mr. Wiles may also be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or the security control room in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected 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.

FDIC: Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. (FAX number (202) 898–3838; Internet address: comments@fdic.gov). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, N.W., Washington, DC 20429, between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

OCC: Roger Tufts, Senior Economic Advisor (202/874–5070), Capital Policy Division; Margot Schwadron, Financial Analyst (202/874–5670), Treasury and Market Risk; or Ronald Shimabukuro, Senior Attorney (202/874–5090), Legislative and Regulatory Activities Division.

Board: Roger Cole, Associate Director (202/452–2618), James Houpt, Deputy Associate Director (202/452–3358), Barbara Bouchard, Senior Supervisory Financial Analyst (202/452–3072), Division of Banking Supervision; or Stephanie Martin, Senior Attorney (202/452–3198), Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Diane Jenkins (202/452–3544).

FDIC: William A. Stark, Assistant Director (202/898–6972), Miguel Browne, Manager (202/898–6789), John J. Feid, Chief (202/898–8649), Division of Supervision; Jamey Basham, Counsel (202/898–7265), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington DC 20429.

SUPPLEMENTARY INFORMATION:

Background

The Agencies' risk-based capital standards are based upon principles contained in the July 1988 agreement entitled ''International Convergence of Capital Measurement and Capital Standards'' (Accord). The Accord, developed by the Basle Committee on Banking Supervision (Committee) and endorsed by the central bank governors of the Group of Ten (G–10) countries (G–10 Governors), provides a framework for assessing an institution's capital adequacy by weighting its assets and off-balance-sheet exposures on the basis of counterparty credit risk.[1] In December 1995, the G–10 Governors endorsed the Committee's amendment to the Accord (effective by year-end 1997) to incorporate a measure for exposure to market risk into the capital adequacy assessment. On September 6, 1996, the Agencies issued revisions to their risk-based capital standards implementing the Committee's market risk amendment (61 FR 47358).

Under the Agencies' market risk rules, banks and bank holding companies (institutions) with significant trading activities must measure and hold capital for exposure to general market risk arising from fluctuations in interest rates, equity prices, foreign exchange rates, and commodity prices and exposure to specific risk associated with debt and equity positions in the trading portfolio. General market risk refers to changes in the market value of on-balance-sheet assets and off-balance-sheet items resulting from broad market movements. Specific risk refers to changes in the market value of individual positions due to factors other than broad market movements and includes such risks as the credit risk of an instrument's issuer.

Under the Agencies' current rules, an institution must measure its general market risk using its internal risk measurement model, subject to certain qualitative and quantitative criteria, to calculate a value-at-risk (VAR) based capital charge.[2] An institution may

[1] The G–10 countries are Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, Switzerland, the United Kingdom, and the United States. The Committee is comprised of representatives of the central banks and supervisory authorities from the G–10 countries and Luxembourg.

[2] The VAR-based capital charge is the higher of (i) the previous day's VAR measure, or (ii) the average of the daily VAR measures for each of the preceding 60 business days multiplied by a factor

measure its specific risk through a valid internal model or by the so-called standardized approach. The standardized approach uses a risk-weighting process developed by the Committee that is applied to individual instruments and through which debt and equity positions in the institution's trading account are assessed a category-based fixed capital charge. However, the Agencies' current rules provide that an institution using an internal model to measure specific risk must hold capital for specific risk at least equal to 50 percent of the specific risk charge calculated using the standardized approach (referred to as the minimum specific risk charge). If the portion of the institution's VAR which is attributable to specific risk does not equal the minimum specific risk charge, the institution's VAR-based capital charge is subject to an add-on charge for the difference. The sum of these capital charges is factored into an institution's risk-based capital ratio.

When the Agencies included the minimum specific risk charge as part of the market risk rules, the Agencies recognized that dual calculations of specific risk—that is, calculating specific risk in the internal model as well as using the standardized approach to establish the minimum specific risk charge—would be burdensome. However, the Agencies' decision to include the minimum specific risk charge was consistent with the Committee's conviction, at the time the Committee adopted its market risk amendment, that a floor was necessary to ensure that modeling techniques for specific risk adequately measured that risk.

Since the Committee adopted the market risk amendment, many institutions have significantly improved their modeling techniques and, in particular, their modeling of specific risk. In September 1997 the Committee determined that sufficient progress had been made to eliminate the use of the minimum specific risk charge and the burden of a separate calculation. Accordingly, the Committee revised the market risk amendment to the Accord so that an institution using a valid internal model to measure specific risk may use the VAR measures generated by the model without being required to compare the model-generated results to the minimum specific risk charge as calculated under the standardized approach.[3] The revisions specify that the specific risk elements of internal models will be assessed consistently with the assessment of the general market risk elements of such models through review by the relevant supervisor and backtesting.

To implement this revision to the market risk amendment, the Agencies are issuing an interim rule with a request for comment. As discussed in the section entitled ''Interim Effectiveness of the Rule,'' the Agencies have found that good cause necessitates making the amendments herein effective immediately, without opportunity for public comment or a delayed effective date. Effectiveness of the amendments herein is on an interim basis, until the Agencies issue a final rule, following public comment on this interim rule, in accordance with the procedures specified in section 553 of the Administrative Procedure Act, 5 U.S.C. 553. The interim rule applies only to the calculation of specific risk under the market risk rules. All other aspects of the market risk rules remain unchanged.

Description of the Interim Rule

An institution whose internal model does not adequately measure specific risk must continue to calculate the standard specific risk capital charge and add that charge to its VAR-based capital charge to produce its total regulatory capital requirement for market risk. An institution whose internal model adequately captures specific risk may base its specific risk capital charge on the model's estimates.

The Agencies will review an institution's internal model to ensure that the model adequately measures specific risk. In order to clarify the risks that must be assessed in this regard, the rule contains a new definition that states that specific risk means the changes in market value of specific positions due to factors other than broad market movements, including such risks as idiosyncratic variation as well as event and default risk. In order to adequately capture specific risk, an institution's internal model must explain the historical price variation in the portfolio and be sensitive to changes in portfolio concentrations (both magnitude and changes in composition), requiring additional capital for greater concentrations. The Agencies will also take into account whether an internal model is robust to an adverse environment. The model's ability to capture specific risk must be validated through backtesting aimed at assessing whether specific risk is adequately captured. In addition, the institution must be able to demonstrate that its methodologies adequately capture event and default risk. An institution that has been able to demonstrate to its supervisor that its internal model adequately captures specific risk consistent with the preceding discussion may use its VAR-based capital charge as its measure for market risk. Such an institution will have no specific risk add-on.

An institution whose model addresses idiosyncratic risk but does not adequately capture event and default risk will continue to have a specific risk add-on. The specific risk add-on for such an institution may be calculated using either one of two approaches, both of which have the effect of subjecting the modeled specific risk elements of the institution's internal risk model to a multiplier of four.[4]

Under the first approach, an institution's internal model must be able to separate its VAR measure into general market risk and specific risk components. The institution's measure for market risk would equal the sum of the total VAR-based capital charge (typically three times the internal model's general and specific risk measure), plus an add-on consisting of the isolated specific risk component of the VAR measure. Alternatively, an institution whose internal model does not separately identify the specific and general market risk of its VAR measure, may use as its measure for market risk the sum of the total VAR-based capital charge, plus an add-on consisting of the VAR measure(s) of the subportfolios of debt and equity positions that contain specific risk. An institution using this approach normally would identify its sub-portfolio structures prior to calculating market risk capital charges and may not alter those sub-portfolio structures without supervisory consultation.

An institution using its internal model for specific risk capital purposes must backtest its internal model to assess whether observed price variation arising from both general market risk and specific risk are accurately

of three. Beginning no later than one year after adopting the market risk rules, an institution is required to backtest its internal model. An institution may be required to apply a higher multiplication factor, up to a factor of four, based on backtesting results.

[3] The revisions are described in the Committee's document entitled ''Explanatory Note: Modification of the Basle Capital Accord of July 1988, as Amended January 1996'' and is available through the Board's and the OCC's Freedom of Information Office and the FDIC's Public Information Center.

[4] The multiplier applicable to the modeled general market risk elements will not be affected. Thus, the multiplier for general market risk will continue to be three, unless a higher multiplier is indicated by virtue of the institution's backtesting results for general market risk, or unless no multiplier is applied because the previous day's VAR for general market risk is higher than the 60-day average times the multiplier.

explained by the model. To assist in model validation, the institution should perform backtests on subportfolios containing specific risk, i.e., traded debt and equity positions. The institution should conduct these backtests with the understanding that subportfolio backtesting is a productive mechanism for assuring that instruments with higher levels of specific risk, especially event or default risk, are being accurately modeled. If backtests of subportfolios reflect an unacceptable internal model, especially for unexplained price variation that may be arising from specific risk, the institution should take immediate action to improve the internal model and ensure that it has sufficient capital to protect against associated risks.

The Agencies, based on information available to them, presently feel that the industry is making significant progress in developing methodologies for modeling specific risk, although progress relating to measurement of event and default risk lags somewhat. The Agencies' consultation over the past two years with other national supervisors on the Committee has supported this view. The Agencies expect institutions to continue improving their internal models and particularly to make substantial progress in measuring event and default risk for traded debt and equity instruments. The Agencies intend to work with the industry in these efforts and believe that, over time, market standards for measuring event and default risk will emerge. As individual modeling methodologies are improved and become accepted within the industry as effective measurement techniques for event and default risk, the Agencies will consider permitting all internal models based on that methodology to be applied without any add-on charge. The Basle Supervisors Committee may issue general guidance for capturing event and default risk for trading book instruments. Until such time as standards for measuring event and default risk are established within the industry, the Agencies intend to cooperate with each other and communicate extensively with other international supervisors to ensure that the market risk capital requirements are implemented in an appropriate and consistent manner.

The Agencies request comment on all aspects of these amendments to their market risk rules.

Interim Effectiveness of the Rule

The Agencies' amendments to their market risk rules are effective on December 31, 1997, but only on an interim basis during the Agencies' full notice and comment rulemaking process. Section 553 of the Administrative Procedure Act permits the Agencies to issue a rule without public notice and comment when the agency, for good cause, finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). Section 553 also permits the Agencies to issue a rule without delaying its effectiveness for thirty days from the publication if the agency finds good cause and publishes it with the rule. 5 U.S.C. 553(d)(3). In addition, section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. 4802(b), permits the Agencies to issue a regulation which takes effect before the first day of a calendar quarter beginning on or after the date on which the regulations are published in final form when the agency determines for good cause published with the regulation that the regulation should become effective before such time. The Agencies have found that good cause exists, for several reasons.

First, the amendments are extremely limited in scope. The number of institutions subject to the Agencies' market risk rules, and consequently to the amendments, is very small, in both absolute and relative terms. The amendments will serve only to reduce regulatory burden, by eliminating the need for institutions that model specific risk to make dual calculations under the standardized approach in order to determine their minimum specific risk charge. Such calculations, while not necessarily difficult from an analytical standpoint, are a voluminous and detailed operation to execute.

Second, immediate effectiveness of the amendments is necessary. The market risk rules become mandatory for certain institutions in January of 1998, and the Agencies will not be able to complete the full rulemaking process by that time. Institutions covered by the market risk rule that model specific risk would be needlessly forced to commit significant internal resources to implement the dual calculation approach potentially on a temporary basis. Contrary to the public interest, they could also be placed at a competitive disadvantage vis a vis their competitors (internationally-active banks in other G–10 countries) who, because of the recent G–10 Governors' endorsement of the Committee's new approach, will not be subject to any dual calculation requirement.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Agencies have determined that this interim final rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Agencies' comparison of the applicability section of the rule to which these amendments pertain to Consolidated Reports of Condition and Income (Call Report) data on all existing institutions shows that the rule will rarely, if ever, apply to small entities. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The Agencies have determined that the interim final rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

OCC Executive Order 12866 Determination

The OCC has determined that the interim final rule does not constitute a ''significant regulatory action'' for the purpose of Executive Order 12866.

OCC Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 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 interim rule eliminates the minimum specific risk charge for institutions that use internal models that adequately capture specific risk. The effect of this rule is to reduce regulatory burden by no longer requiring institutions to make dual calculations under both the institution's internal model and the standardized specific risk model. The OCC therefore has determined that the effect of the interim rule on national banks as a whole will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Accordingly, the OCC has not prepared a budgetary impact statement or specifically

addressed the regulatory alternatives considered.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Bank deposit insurance, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

Authority and Issuance

Office of the Comptroller of the Currency

12 CFR Chapter I

For the reasons set out in the joint preamble, part 3 of chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

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

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

2. Section 2 of Appendix B to part 3 is amended by revising paragraph (b)(2) to read as follows:

Appendix B To Part 3—Risk-Based Capital Guidelines; Market Risk Adjustment

* * * * *

Section 2. Definitions

* * * * *

(b) * * *

(2) *Specific risk* means changes in the market value of specific positions due to factors other than broad market movements and includes default and event risk as well as idiosyncratic variations.

* * * * *

3. Section 5 of appendix B to part 3 is amended by revising paragraphs (a) and (b) to read as follows:

* * * * *

Section 5. Specific Risk

(a) *Specific risk surcharge.* For purposes of section 3(a)(2)(ii) of this appendix, a bank shall calculate its specific risk surcharge as follows:

(1) *Internal models that incorporate specific risk.* (i) *No specific risk surcharge required for qualifying internal models.* A bank that incorporates specific risk in its internal model has no specific risk surcharge for purposes of section 3(a)(2)(ii) of this appendix if the bank demonstrates to the OCC that its internal model adequately measures all aspects of specific risk, including default and event risk, of covered debt and equity positions. In evaluating a bank's internal model the OCC will take into account the extent to which the internal model:

(A) Explains the historical price variation in the trading portfolio; and

(B) Captures concentrations.

(ii) *Specific risk surcharge for modeled specific risk that fails to adequately measure default or event risk.* A bank that incorporates specific risk in its internal model but fails to demonstrate that its internal model adequately measures all aspects of specific risk, including default and event risk, as provided by this section 5(a)(1), must calculate its specific risk surcharge in accordance with one of the following methods:

(A) If the bank's internal model separates the VAR measure into a specific risk portion and a general market risk portion, then the specific risk surcharge equals the previous day's specific risk portion.

(B) If the bank's internal model does not separate the VAR measure into a specific risk portion and a general market risk portion, then the specific risk surcharge equals the sum of the previous day's VAR measure for subportfolios of covered debt and equity positions.

(2) *Specific risk surcharge for specific risk not modeled.* If a bank does not model specific risk in accordance with section 5(a)(1) of this appendix, then the bank shall calculate its specific risk surcharge using the standard specific risk capital charge in accordance with section 5(c) of this appendix.

(b) *Covered debt and equity positions.* If a model includes the specific risk of covered debt positions but not covered equity positions (or vice versa), then the bank may reduce its specific risk charge for the included positions under section 5(a)(1)(ii) of this appendix. The specific risk charge for the positions not included equals the standard specific risk capital charge under paragraph (c) of this section.

* * * * *

Dated: December 19, 1997.

Eugene A. Ludwig,

Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter II

For the reasons set forth in the joint preamble, parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations are amended as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92(a), 93(a) 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1835(a), 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In appendix E to part 208, section 1., paragraph (a), footnote 1 is revised to read as follows:

Appendix E to Part 208—Capital Adequacy Guidelines for State Member Banks; Market Risk Measure

Section 1. Purpose, Applicability, Scope, and Effective Date

(a) * * *[1] * * *

* * * * *

3. In appendix E to part 208, section 2., paragraph (b)(2) is revised to read as follows:

* * * * *

Section 2. Definitions

* * * * *

(b) * * *

(2) *Specific risk* means changes in the market value of specific positions due to factors other than broad market movements. Specific risk includes such risk as idiosyncratic variation, as well as event and default risk.

* * * * *

4. In appendix E to part 208, section 5., paragraphs (a), (b), and (c) introductory text are revised to read as follows:

* * * * *

[1] This appendix is based on a framework developed jointly by supervisory authorities from the countries represented on the Basle Committee on Banking Supervision and endorsed by the Group of Ten Central Bank Governors. The framework is described in a Basle Committee paper entitled ''Amendment to the Capital Accord to Incorporate Market Risks,'' January 1996. Also see modifications issued in September 1997.

Section 5. Specific Risk

(a) *Modeled specific risk* A bank may use its internal model to measure specific risk. If the bank has demonstrated to the Federal Reserve that its internal model measures the specific risk, including event and default risk as well as idiosyncratic variation, of covered debt and equity positions and includes the specific risk measures in the VAR-based capital charge in section 3(a)(2)(i) of this appendix, then the bank has no specific risk add-on for purposes of section 3(a)(2)(ii) of this appendix. The model should explain the historical price variation in the trading portfolio and capture concentration, both magnitude and changes in composition. The model should also be robust to an adverse environment and have been validated through backtesting which assesses whether specific risk is being accurately captured.

(b) *Add-on charge for modeled specific risk.* If a bank's model measures specific risk, but the bank has not been able to demonstrate to the Federal Reserve that the model adequately measures event and default risk for covered debt and equity positions, then the bank's specific risk add-on is determined as follows:

(1) If the model is susceptible to valid separation of the VAR measure into a specific risk portion and a general market risk portion, then the specific risk add-on is equal to the previous day's specific risk portion.

(2) If the model does not separate the VAR measure into a specific risk portion and a general market risk portion, then the specific risk add-on is the sum of the previous day's VAR measures for subportfolios of covered debt and covered equity positions.

(c) *Add-on charge if specific risk is not modeled.* If a bank does not model specific risk in accordance with paragraph (a) or (b) of this section, then the bank's specific risk add-on charge equals the components for covered debt and equity positions as appropriate:

* * * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p-1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In appendix E to part 225, the appendix heading is revised and in section 1., paragraph (a), footnote 1 is revised to read as follows:

Appendix E To Part 225—Capital Adequacy Guidelines For Bank Holding Companies: Market Risk Measure

Section 1. Purpose, Applicability, Scope, and Effective Date

(a) * * * [1] * * *

[1] This appendix is based on a framework developed jointly by supervisory authorities from the countries represented on the Basle Committee on Banking Supervision and endorsed by the Group of Ten Central Bank Governors. The framework is described in a Basle Committee paper entitled ''Amendment to the Capital Accord to Incorporate Market Risks,'' January 1996. Also see modifications issued in September 1997.

* * * * *

3. In appendix E to part 225, section 2., paragraph (b)(2) is revised to read as follows:

* * * * *

Section 2. Definitions

* * * * *

(b) * * *

(2) *Specific risk.* means changes in the market value of specific positions due to factors other than broad market movements. Specific risk includes such risk as idiosyncratic variation, as well as event and default risk.

* * * * *

4. In appendix E to part 225, section 5., paragraphs (a), (b), and (c) introductory text are revised to read as follows:

* * * * *

Section 5. Specific Risk

(a) *Modeled specific risk.* A bank holding company may use its internal model to measure specific risk. If the institution has demonstrated to the Federal Reserve that its internal model measures the specific risk, including event and default risk as well as idiosyncratic variation, of covered debt and equity positions and includes the specific risk measures in the VAR-based capital charge in section 3(a)(2)(i) of this appendix, then the institution has no specific risk add-on for purposes of section 3(a)(2)(ii) of this appendix. The model should explain the historical price variation in the trading portfolio and capture concentration, both magnitude and changes in composition. The model should also be robust to an adverse environment and have been validated through backtesting which assesses whether specific risk is being accurately captured.

(b) *Add-on charge for modeled specific risk.* If a bank holding company's model measures specific risk, but the institution has not been able to demonstrate to the Federal Reserve that the model adequately measures event and default risk for covered debt and equity positions, then the institution's specific risk add-on is determined as follows:

(1) If the model is susceptible to valid separation of the VAR measure into a specific risk portion and a general market risk portion, then the specific risk add-on is equal to the previous day's specific risk portion.

(2) If the model does not separate the VAR measure into a specific risk portion and a general market risk portion, then the specific risk add-on is the sum of the previous day's VAR measures for subportfolios of covered debt and covered equity positions.

(c) *Add-on charge if specific risk is not modeled.* If a bank holding company does not model specific risk in accordance with paragraph (a) or (b) of this section, then the institution's specific risk add-on charge equals the components for covered debt and equity positions as appropriate:

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 19, 1997.

William W. Wiles,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

For the reasons set forth in the joint preamble, part 325 of chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

2. In appendix C to part 325, section 1(a), footnote 1 is revised to read as follows:

Appendix C to Part 325—Risk-Based Capital For State Non-Member Banks; Market Risk

Section 1. Purpose, Applicability, Scope, and Effective Date

(a) * * * [1] * * *

* * * * *

3. In appendix C to part 325, section 2., paragraph (b)(2) is revised to read as follows:

* * * * *

Section 2. Definitions

* * * * *

(b) * * *

(2) *Specific risk* means changes in the market value of specific positions due to factors other than broad market movements. Specific risk includes such risk as idiosyncratic variation, as well as event and default risk.

* * * * *

4. In appendix C to part 325, section 5., paragraphs (a), (b), and (c) introductory text are revised to read as follows:

* * * * *

Section 5. Specific Risk

(a) *Modeled specific risk.* A bank may use its internal model to measure specific risk. If

[1] This appendix is based on a framework developed jointly by supervisory authorities from the countries represented on the Basle Committee on Banking Supervision and endorsed by the Group of Ten Central Bank Governors. The framework is described in a Basle Committee paper entitled ''Amendment to the Capital Accord to Incorporate Market Risks,'' January 1996. Also see modifications issued in September 1997.

the bank has demonstrated to the FDIC that its internal model measures the specific risk, including event and default risk as well as idiosyncratic variation, of covered debt and equity positions and includes the specific risk measure in the VAR-based capital charge in section 3(a)(2)(i) of this appendix, then the bank has no specific risk add-on for purposes of section 3(a)(2)(ii) of this appendix. The model should explain the historical price variation in the trading portfolio and capture concentration, both magnitude and changes in composition. The model should also be robust to an adverse environment and have been validated through backtesting which assesses whether specific risk is being accurately captured.

(b) Add-on charge for modeled specific risk. If a bank's model measures specific risk, but the bank has not been able to demonstrate to the FDIC that the model adequately measures event and default risk for covered debt and equity positions, then the bank's specific risk add-on for purposes of section 3(a)(2)(ii) of this appendix is as follows:

(1) If the model is susceptible to valid separation of the VAR measure into a specific risk portion and a general market risk portion, then the specific risk add-on is equal to the previous day's specific risk portion.

(2) If the model does not separate the VAR measure into a specific risk portion and a general market risk portion, then the specific risk add-on is the sum of the previous day's VAR measures for subportfolios of covered debt and covered equity positions.

(c) *Add-on charge if specific risk is not modeled.* If a bank does not model specific risk in accordance with paragraph (a) or (b) of this section, the bank's specific risk add-on charge for purposes of section 3(a)(2)(ii) of this appendix equals the components for covered debt and equity positions as appropriate:

* * * * *

Dated at Washington, D.C. this 9th day of December, 1997.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 97–33653 Filed 12–29–97; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P

federal register

Tuesday
December 30, 1997

Part VI

Department of Education

National Assessment of Education Progress (NAEP) Secondary Analysis Program; FY 1998 Awards Applications; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.902B]

National Assessment of Educational Progress (NAEP) Secondary Analysis Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

Purpose of Program: The purpose of the NAEP Secondary Analysis program is to encourage eligible parties to prepare reports that would not otherwise be available utilizing new ideas or state-of-the-art techniques to analyze and report the information contained in NAEP and NAEP High School Transcript Studies. Analyses and reports prepared under this program should potentially be useful to the general public, parents, educators, educational researchers, or policy makers.

ELIGIBLE APPLICANTS: Public or private organizations and consortia of organizations

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: March 5, 1998

APPLICATIONS AVAILABLE: January 5, 1998

AVAILABLE FUNDS: $700,000

ESTIMATED RANGE OF AWARDS: $15,000–$110,000

ESTIMATED AVERAGE SIZE OF AWARDS: $85,000

ESTIMATED NUMBER OF AWARDS: 5–7

MAXIMUM AWARD: The Secretary will not consider an application that proposes a budget exceeding $110,000.

Note: The Department is not bound by any estimates in this notice.

PROJECT PERIOD: Up to 18 months

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 in 34 CFR Part 700.

INVITATIONAL PRIORITIES: The Secretary is particularly interested in applications that meet one or more of the invitational priorities in this notice. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Invitational Priority 1—Projects that use NAEP achievement data alone or in combination with other data sets to assist policymakers and educators who make decisions about curriculum and instruction.

Invitational Priority 2—Projects designed to assist states in analyzing, interpreting and reporting their state-level NAEP results.

Invitational Priority 3—Projects that include the development of analytic procedures that improve precision with which NAEP estimates group and subgroup performance.

Invitational Priority 4—Projects that develop improved sampling procedures for national or state-level NAEP.

Invitational Priority 5—Projects whose analyses and reports include the development of statistical software that allows more advanced analytic techniques to be readily applied to NAEP data.

EVALUATION CRITERIA: The Secretary selects from the criteria in 34 CFR 700.30(e) to evaluate applications for new grants under this competition. Under 34 CFR 700.30(a), the Secretary announces in the application package the evaluation criteria selected for this competition and the maximum weight assigned to each criterion.

FOR APPLICATIONS OR INFORMATION CONTACT: *For an application package* send written request to Alex Sedlacek, U.S. Department of Education, National Center for Education Statistics, Office of Educational Research and Improvement, Room 404B, 555 New Jersey Avenue, N.W., Washington, D.C. 20208–5653; Internet (alex__sedlacek@ed.gov); or FAX your request to (202) 219–2061 (include CFDA number listed above and the surface mail address to which the application should be sent). *For information* contact Alex Sedlacek at (202) 219–1734. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register** PROGRAM AUTHORITY: 20 U.S.C. 9010.

Dated: December 22, 1997.

Ricky T. Takai,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 97–339151 Filed 12–29–97; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
December 30, 1997

Part VII

Department of Agriculture

Forest Service

Fee Schedule for Communications Facilities Authorized To Use and Occupy National Forest System Lands in Regions 8, 9, and 10; Notice

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AB60

Fee Schedule for Communications Facilities Authorized To Use and Occupy National Forest System Lands in Regions 8, 9, and 10

AGENCY: Forest Service, USDA.

ACTION: Notice; adoption of final policy.

SUMMARY: The Forest Service is adopting a final policy and fee schedule for determining annual fees for communications uses authorized on National Forest System lands for the Southern and Eastern States and Alaska (Forest Service Regions 8, 9, and 10, respectively). The same policy and fee schedule have been in effect since 1995 in the Western States (Regions 1 to 6). The Forest Service and the Bureau of Land Management in the Department of the Interior jointly developed identical fee schedules, the same definitions for use categories, and similar administrative procedures for administering and determining fees for communications uses, which are in effect in Regions 1 to 6 for the Forest Service and nationally for the Bureau of Land Management. The Forest Service fee schedule for Regions 1 to 6 was published as a final policy in the **Federal Register** October 27, 1995 (60 FR 55089), and the Bureau of Land Management schedule was published as a final rule November 13, 1995 (60 FR 57057). Implementation of this final policy and fee schedule for Regions 8, 9, and 10 completes the Forest Service's efforts to establish annual fees for all communications uses on National Forest System lands that are consistent throughout all States, are based on sound business management principles, and reflect fair market value, as required by Title V of the Federal Land Policy and Management Act of 1976, the Independent Offices Appropriations Act of 1952, and the Office of Management and Budget Circular A–25.

EFFECTIVE DATE: This policy is effective December 30, 1997 for new use authorizations and on January 1, 1998, for existing use authorizations in Regions 8, 9, and 10.

FOR FURTHER INFORMATION CONTACT: Questions about this policy and fee schedule should be addressed to Mark Scheibel, Lands Staff (2700), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 205–1264.

SUPPLEMENTARY INFORMATION:

Background

Use of National Forest System lands for transmission of electronic signals, commonly called communications uses, is authorized by Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761–1771). This use involves buildings, towers, or other physical improvements built, installed, or established to support communications equipment.

From 1987 to 1992, through various notices in the **Federal Register**, the Forest Service began publishing final and revised fee schedules on a regional basis for selected categories of communications uses on sites serving rural areas. The notices explained the need for further analysis to complete the fee schedules for the remaining use categories. In the interim, on-site appraisals would determine commercial mobile radio and cellular telephone fees for sites serving urban areas (Los Angeles, Albuquerque, and Boise, for example) and for television and FM radio broadcast.

To forestall the effect of significant fee increases on authorization holders, especially in rural areas, Congress adopted administrative provisions in the Appropriations Acts for Interior and Related Agencies for fiscal years 1990 through 1994 preventing the Forest Service from raising fees over the amount in effect on January 1, 1989. In the fiscal year 1992 Appropriations Act, Congress extended the prohibition to include those authorizations issued by the Department of the Interior, Bureau of Land Management (BLM). In addition, the conference report for the Appropriations Act directed the Secretaries of Agriculture and Interior to establish a broad-based Radio and Television Broadcast Use Fee Advisory Committee (Advisory Committee). The Advisory Committee's charge was to review the schedules, with particular emphasis on their impact on rural communities in the Western United States.

The Forest Service and BLM entered into a joint agency agreement in April 1991 to develop parallel procedures and standards for establishing fair market rental values for communications uses on lands they administer. The objective of the effort was to develop joint market-based fee schedules. At that time, the Forest Service decided to proceed with a fee schedule for only the Western States (Regions 1 to 6) and to develop fee schedules for the Southern and Eastern States and Alaska at a later date.

The Advisory Committee submitted its report to the Secretaries on December 11, 1992. The report made several recommendations: (1) Use of fee schedules instead of individual site appraisals to improve cost efficiency and administration, (2) acceptance of industry-recognized market ranking systems, (3) a phase-in period for rent increases greater than $1,000, (4) collection of 25 percent of the gross sublease income received from tenants by facility owners, (5) issuance of a ''footprint'' lease in which only facility owners would hold authorizations, and (6) annual fee increases based on the Consumer Price Index (Urban Consumer, U.S. City Average).

On July 13, 1993, the Forest Service published a **Federal Register** notice (58 FR 37840) requesting public comments on a proposed fee schedule for the four categories of commercial uses previously excluded from the regional schedules. The uses included television broadcast, FM radio broadcast, commercial mobile radio, and cellular telephone uses. The adoption of a final revised fee schedule would complete the regional schedules in place in Forest Service Regions 1 through 6 in the Western United States. Additionally, the agency stated its intention that its fee schedule would be fully consistent with that of BLM and acknowledged that BLM planned to issue a separate **Federal Register** notice proposing the use of fee schedules for all communications uses applicable to lands under its jurisdiction.

The Forest Service and BLM jointly reviewed and considered the comments received by the Forest Service on its July 1993 proposed policy (58 FR 37840, July 13, 1993), incorporating and adopting the comments as appropriate in the development of the BLM proposed rule. On July 12, 1994, BLM published a proposed rule in the **Federal Register** (59 FR 35596), requesting comments on amendments to its right-of-way regulations. The proposed rule contained procedures for setting fair market rent for communications uses on public land and established schedules and procedures for eleven categories of communications service.

On July 12, 1994, the House of Representatives Committee on Natural Resources, Subcommittee on National Parks, Forests and Public Lands, and the Committee on Government Operations, Subcommittee on Environment, Energy, and Natural Resources held a joint hearing on communications site fees. The General Accounting Office released a report (GAO–RCED–94–248) at this hearing which concluded that fees for communications sites on Federal lands were usually significantly below fair

market value. The report acknowledged that the Forest Service fees were based on an outdated formula established forty years ago and the BLM rental rates were based on out-of-date appraisals. The report concluded that appropriations-related legislation impeded agency efforts to implement new fees. The report warned that if the limits continued, the Federal Government would not obtain fair market value for communications sites for many years. Because of the joint agency testimony and the General Accounting Office report, the committees strongly encouraged the agencies to complete the fee schedules as soon as possible.

The Forest Service and BLM developed the final fee schedule and similar policies and procedures for administering communications authorizations using information gained from public responses to the proposed Forest Service policy (58 FR 37840, July 13, 1993) and the proposed BLM rule (59 FR 35596, July 12, 1994). The agencies also used the Advisory Committee report; the General Accounting Office report; discussions with hundreds of industry representatives and private lessors, commercial communications site managers, State and local government representatives, and appraisers; and nearly 2,000 confirmed private lease transactions. The Forest Service fee schedule for Regions 1 to 6 was published as a final policy in the **Federal Register** October 27, 1995 (60 FR 55089), and the Bureau of Land Management schedule was published as a final rule November 13, 1995.

On August 11, 1997, The Forest Service published a notice in the **Federal Register** (62 FR 43053) requesting public comments on a proposed fee schedule and policy for National Forest System lands in the Southern and Eastern States and Alaska (Regions 8, 9, and 10) identical to those previously adopted for Regions 1 to 6 (60 FR 55089, October 27, 1995). Comments were considered on the development of the final Forest Service fee schedule, policy, and procedures for communications fees for all Forest Service Regions, which are being issued as amendments to Forest Service Handbook (FSH) 2709.11, Special Uses Handbook, chapter 30, Fee Determinations, and chapter 40, Special Uses Administration. The text of the final policy is set out at the end of this notice.

Analysis and Response to Public Comments

The Forest Service received four comments on the notice published in the **Federal Register** August 11, 1997 (62 FR 43053), requesting public comments on a proposed fee schedule and policy for National Forest System lands in the Southern and Eastern States and Alaska (Regions 8, 9, and 10). The proposed policy and fee schedule were identical to those already in effect for the Western States in Regions 1 to 6. All responses consisted of individual letters. No form letters or petitions were received.

Fees for Amateur Radio

Comment. Two respondents commented on proposed fees for amateur radio users. Amateur radio is classified in the ''other'' use category. One respondent stated that a fee increase from $34 per year to $77.25 per year would place an undue hardship on their organization. One respondent stated that amateur radio users provide a public service and requested that their fee not be raised too high.

Response. The Forest Service does not believe that the fee rate for the ''other'' category is excessive. In addition, only facility owners in the ''other'' category will be charged a fee. Amateur radio users who are not facility owners and who just occupy space in another's facility will not be required to possess an agency authorization and will not be charged a fee by the Forest Service if they relinquish their current authorizations.

Other Issues

Comment. The Forest Service received two comments that were not within the scope of August 1997 proposed policy (62 FR 43053). One respondent asked that his fee waiver continue. Another respondent stated that, as a taxpayer, he felt that the Forest Service should maintain the roads and sites and he was against proposed site fees.

Response. Forest Service policy for fee waivers and exemptions is contained in Forest Service Handbook, 2709.11, chapter 30, and related regulations are in Title 36, Code of Federal Regulations, Part 251. This final policy and the fee schedule do not address or change current regulations or policy concerning fee waivers and exemptions.

Fees collected on National Forest System lands reflect fair market value for the holder's use of public land (land use fee). This land use fee is not intended to pay for expenses that are the holder's responsibility to bear, such as maintenance of exclusive use roads and private investments. Nor should the general public, through general taxes, be responsible for maintaining these facilities. The general public should, however, be compensated for the communications holder's use of the public land through a land use fee.

Fee Schedule Implementation

The draft policy indicated the final fee schedule and associated policy changes would require Forest Service Regions 8, 9, and 10 to replace their existing fee schedules. This final fee schedule replaces Regions 8, 9, and 10 communication use schedules, except for passive reflector and local exchange network uses. The fee schedule in FSH 2709.11, section 36.21, exhibit 01, set out at the end of this notice displays use fees for 1998 billings. This fee schedule reflects a 2.2 percent adjustment based on the Consumer Price Index-Urban Consumer, U.S. City Average (CPI–U), from the fee schedule for 1997 billings used in the draft policy. The fee schedule will be updated annually to reflect: (1) The CPI–U adjustment factor applied to annual billings for existing authorizations; (2) revised schedule fees, reflecting the CPI–U adjustment to be used for new authorizations; and (3) changes to the Ranally Metro Area (RMA) population rankings as identified in the current edition of the ''Rand McNally Commercial Atlas and Marketing Guide.''

The agency recognizes that the final fee schedule may result in a reduction of current fees for some holders for several reasons, including: (1) Fees established by 1992 Regional schedules, which have been increased by the CPI–U adjustment factor each year; (2) definition of a ''customer'' to include internal and private uses renting space within a communication facility and not reselling communication services to others; (3) the inherent leveling effect of a fee schedule applying a national market-based ranking system rather than specific geographic market conditions.

However, the agency believes that implementation of a national fee schedule for most communications uses and the annual updating of fees with applicable CPI–U adjustments through national direction will end the inequity between fees charged to users in different regions and at the same time return fair market value in rental income to the United States.

The Forest Service plans the following actions and methods for implementing the final policy:

1. Regions 8, 9, and 10 will use the same Communication Use Lease, Form FS–2700–4a, currently used in Regions 1 to 6 to authorize communications uses on National Forest System lands. The new lease will allow tenant and customer occupancy of site-designated approved communication uses,

eliminating the requirement for prior written consent of the agency or issuance of separate authorizations to customers and tenants.

2. All authorization holders will receive notice of the changes affecting communications site use fees, and they will be given the option to convert to the new communications lease. The holders will have 60 days to respond to the authorized officer indicating their intention. Permits that expire will be replaced with the new communications lease.

3. Tenants and customers may retain an existing authorization or relinquish the authorization and be included in the facility owner's authorization. Tenants and customers electing to maintain an existing authorization will be billed the full use fee according to the schedule and category of use.

4. Fees for uses not included in the schedule continue to be determined on a Regional basis by other reasonable methods, including appraisals. However, for personal communication services (PCS) the cellular telephone rate from the fee schedule for the population of the community served will be used until fair market value is established. The holders will be advised that fees may be adjusted, if necessary, to reflect fair market value for PCS uses.

5. If a nonscheduled fee is indicated, the current fee remains in effect until the new fee is determined.

6. Separate fees are not assessed for ancillary uses.

7. Holders will be notified of the calendar year 1998 fee by written notice from the authorized officer. The notification will include instructions for appealing the new fees in accordance with existing regulations.

8. The fee schedule is effective December 30, 1997 for new communications uses, and January 1, 1998, for existing communications uses in Regions 8, 9, and 10.

Controlling Paperwork Burdens on the Public

This policy does not contain any record keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 which are not already required by law or not already approved for use. The information collection being requested as a result of this action has been approved by OMB (Number 0596–0082, expiration date June 30, 1999). Accordingly, further review is not required under provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and implementing regulations at 5 CFR part 1320 do not apply.

Environmental Impact

This final policy establishes a fee schedule to guide the administrative process of calculating annual fees to be charged holders of authorizations for communications uses on National Forest System lands in Forest Service Regions 8, 9, and 10 (Southern and Eastern States and Alaska, respectively). The existing regional fee schedules for communications uses in Regions 8, 9, and 10 would be replaced by the fee schedule already in effect for the Western States in Regions 1 to 6. Upon adoption of this final fee schedule, individual authorization holders would be notified of the changes in their annual fees.

Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or impact statement, ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' Based on consideration of the comments received and the nature and scope of this policy, the Forest Service has determined that this policy falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Regulatory Impact

This final policy has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant policy. This policy will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This policy will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this proposed policy is not subject to Office of Management and Budget (OMB) review under Executive Order 12866.

Moreover, this final policy has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that act. The phase-in of annual fees included in the final policy will allow small entities to adjust to the new fees over a period of time, and thus minimize the risk of adverse impact on some businesses because of the magnitude of the increases in some fees.

No Takings Implications

This policy has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the policy does not pose the risk of a taking of Constitutionally protected private property.

Civil Justice Reform Act

This proposed policy has been reviewed under Executive Order 12778, Civil Justice Reform. When this final policy is adopted, (1) all State and local laws and regulations that are in conflict with this policy or which would impede its full implementation would be preempted; (2) no retroactive effect would be given to this policy; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, the Department has assessed the effects of this policy on State, local, and tribal governments and the private sector. This policy does not compel the expenditure of $100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Dated: December 7, 1997.

Robert C. Joslin,

Acting Associate Chief.

Note: The Forest Service organizes its directive system by alpa-numeric codes and subject headings. Only those sections of the Forest Service Handbook (FSH) 2709.11, Special Uses Handbook, including policy direction that is the subject of this notice are set out here. The intended audience for this direction is Forest Service employees charged with issuing and administering communications use authorizations. The text of the proposed policy and fee schedule follows:

FSH 2709.11—Special Uses Handbook

Chapter 30—Fee Determination

36.2—Communications Site Fee Schedule. This section provides direction for use of the fee schedule for communications uses on National Forest System lands.

36.21—Determination of Fees. The authorized officer shall request that the holder provide a certified statement by October 15 of each year containing a list

of tenants, by category of use, in the facility on September 30 of that year.

Calculate the annual fee using the fee schedule (ex. 01) and the population strata based on the Ranally Metro Area (RMA) population and city listing (ex. 02). The fee schedule provides fees by category of use and population. See section 36.21a for exceptions to using the fee schedule.

1. Consider the following when determining fees:

a. If the communications site serves an RMA community (ex. 02), determine the fee by the category of use and the corresponding population range on the fee schedule (ex. 01).

b. If the communications site does not serve a listed RMA community (ex. 02), determine the fee based on the population of the largest community (according to the most current ''Rand McNally Road Atlas'') served by the site.

c. If the communications site does not serve a community, determine the fee based on the lowest schedule fee (ex. 01) for the category of use, except in situations described in section 36.21a.

d. Consider co-owned AM and FM stations located in the same facility as two radio stations in determining fees.

e. Do not apply the 25 percent schedule rate for customers (sec. 48.1, para. 5), including internal and private users, renting space in a communications facility.

2. Apply the fee schedule to communications uses providing the following services:

a. *Television Broadcast.* (Sec. 48.11a of this Handbook).

b. *AM and FM Radio Broadcast.* (Sec. 48.11b).

c. *Cable Television.* (Sec. 48.11c).

d. *Broadcast Translator, Low Power Television, and Low Power FM Radio.* (Sec. 48.11d).

e. *Commercial Mobile Radio Service (CMRS) and Facility Manager.* (Sec. 48.12a).

f. *Cellular Telephone.* (Sec. 48.12b).

g. *Private Mobile Radio Service.* Stand alone operations only. (Sec. 48.12c).

h. *Microwave.* Common carrier microwave relay and industrial microwave. (Sec. 48.12d).

i. *Other Communications Uses.* Stand alone operations only. This category includes the following uses: Amateur radio; personal/private receive only; and natural resource and environmental monitoring. (Sec. 48.13).

3. Except for fees that apply to a facility manager (para. 4), assess fees for all the preceding uses in paragraphs 2a to 2i providing space to tenants as follows:

a. Determine a base fee from the schedule rate fee for the building owner or the use generating the highest schedule fee in the facility. If a facility owner's fee is equal to or greater than any other schedule fee in the facility, the facility owner's use is the base fee. If the highest schedule fee is a ''tenant'' fee, the ''tenant'' fee becomes the base fee and the facility owner's schedule rate fee is used as a tenant fee for calculating additional fees (following para. b).

b. Add 25 percent of the schedule fee for each ''tenant'' (ex. 01). Include 25 percent of the building owner's schedule fee if it is not the highest fee and, therefore, not used as the base fee.

Sample fee calculations are provided as follows:

Example 1: A communications facility serving an RMA population area of 200,000, with a CMRS provider (building owner), one TV broadcaster, two FM broadcasters, one cellular telephone, and two private mobile radio users.

Base fee = $6,000 (TV broadcast is the highest value use in the facility) + $750 (25% CMRS provider (building owner))+ $2,000 (25% of two FM broadcasters) + $1,000 (25% cellular telephone) + $0.00 (no charge for PMRS) = Total fee for the facility: $9,750.

Example 2: A communications facility serving an RMA population area of 800,000, with a TV station (building owner), one FM broadcaster, and three private mobile radio users.

Base fee = $14,000 (TV broadcast is the highest value use in the facility) + $2,500 (25% FM broadcaster) + $0.00 (no charge for PMRS) = Total fee for the facility: $16,500.

4. Fees for facility managers are calculated differently from other uses. Facility managers provide space for other communications uses; they do not directly provide communications services to others. Determine the base fee as described in the preceding paragraph. If a facility manager's fee is equal to or greater than any other schedule fee in the facility, the facility manager's use is the base fee. However, if the highest valued schedule fee for the facility is not the facility manager's, do not ''substitute'' the 25 percent facility manager fee for the tenant fee used for the base fee.

Sample fee calculations for facility manager uses are provided as follows:

Example 1: A facility manager serving an RMA population area of 200,000, with three microwave providers and two amateur radio operators.

Base fee = $3,000 (the facility manager schedule rate is the highest valued use in the facility) + $1,500 (25% three microwave users) + $0.00 (no charge for amateur radio) = Total fee for the facility: $4,500.

Example 2: A facility manager serving an RMA population area of 800,000, with a TV station, three FM broadcasters, and three private mobile radio users.

Base fee = $14,000 (TV broadcast is the highest value use in the facility) + $7,500 (25% FM broadcaster) + $0.00 (no charge for PMRS) = Total fee for the facility: $21,500.

5. Charge a full fee based on the type of use and population served and complete a separate authorization, Form FS–2700–4, Special Use Permit, for tenants and customers in Federal facilities.

6. Authorize and bill separately for stand-alone facilities under different ownerships that depend on each other. For example, Holder A owns a communications tower (no building); Holder B owns a communications building (no tower). Because each facility is dependent upon the other, Holder A and Holder B share common tenants and customers as occupants in their facilities. In these situations, consider each improvement as a separate facility and calculate a fee based on the fee schedule and policy.

36.21a—Exceptions to Fee Schedule. Fees not established by use of the fee schedule shall be based on comparative market surveys, appraisals, or other reasonable methods. All such fee determinations shall be documented, supported, and approved by the authorized officer.

The following are exceptions to the fee schedule:

1. The fee or use is not covered by the fee schedule.

2. The fee has been or will be established through competitive bid or appraisal and will be updated in accordance with the terms and conditions of the authorization.

3. The Regional Forester concurs with the authorized officer's determination that the communications site serves a population of 1 million or more and the expected fee for the communications use is more than $10,000 above the established fee schedule.

4. The expected fee exceeds the schedule rate fee by 5 times or more.

36.22—Phase-in of Fees. Fees for new uses (new construction) do not qualify for a phase-in. For existing uses, phase in first-year increases in fees of more than $1,000 over a 5-year period. For example, if the current total fee is $700, and the new total fee is $2,700, calculate the 5-year phase-in as follows:

1. *Year 1.* $700 (current total fee in preceding year) + $1,000 (limit of first year increase) = $1,700 (first year's fee);

2. *Year 2.* [$1,700 (first year fee) + $250 (¼ of remaining increase ($1,000)

greater than $1,000)] × 1.02* = $1,989 (second year's fee);

3. *Year 3*. [$1,989 (second year's fee) + $250 (¼ of remaining increase ($1,000) greater than $1,000)] × 1.02* = $2,284 (third year's fee);

4. *Year 4*. [$2,284 (third year's fee) + $250 (¼ of remaining increase ($1,000) greater than $1,000)] × 1.02* = $2,584 (fourth year's fee);

5. *Year 5*. [$2,584 (fourth year's fee) + $250 (¼ of remaining increase ($1,000) greater than $1,000)] × 1.02* = $2,891 (fifth year's fee);

6. *Year 6*. Phase-in of the fee schedule has been completed. In year six calculate fees on the building inventory and new fee schedule. In succeeding years, apply only the CPI–U to the previous year's fee and adjust to reflect changes in building inventory if necessary.

* Assumed 2 percent increase each year in the United States Department of Labor Consumer Price Index for All Urban Consumers—U.S. City Average (CPI–U).

36.23—Updating Fee Schedule. The Director of Lands, Washington Office, shall update the fee schedule (sec. 36.21, ex. 01) annually, based on the CPI–U published in July of each year. Annual adjustments based on the CPI–U shall be limited to 5 percent. The Director of Lands shall review the fee schedule no later than 10 years after the date of implementation of this schedule, and at least every 10 years thereafter, to ensure that fees reflect fair market value.

The Director of Lands shall review and update the RMA city and population table (sec. 36.21, ex. 02) annually.

36.24—Fee Waivers and Exemptions. For direction on fee waivers and exemptions, see sections 31.2 through 31.4.

36.25—Fee Adjustment for Required Free Use. In no circumstance require a private holder to provide free space to Federal agencies or any other entity. In order to rectify past situations in which the Forest Service required the holder to provide free rental space, discount the annual fee by the same percentage that the entity receiving free use occupies (in square feet) in that building. For example, if the Forest Service previously required a building owner to provide free use for 20 percent of the building, discount the annual fee by 20 percent. Such a discount is valid for the period of time specified in an existing agreement between the parties.

BILLING CODE 3410–11–P

36.21 - Exhibit 01

FEE SCHEDULE FOR COMMUNICATIONS USES

Billing Year 1998

POPULATION	TELEVISION	AM/FM RADIO *	CABLE TELEVISION	BROADCAST TRANSLATOR/ LPTV/LPFM	CMRS/ FACILITY MANAGER	CELLULAR TELEPHONE	PRIVATE MOBILE RADIO SERVICE	MICROWAVE	OTHER	PASSIVE REF. & LOCAL EXCH. NETWORKS	SAMPLE RMA'S
5,000,000 plus	$47,369.70	$35,790.44	*INSUFFICIENT*	*INSUFFICIENT*	$12,631.92	$12,631.92	$10,526.60	$10,526.60	$78.95		Los Angeles, CA
2,500,000 to 4,999,999	$31,579.80	$22,105.86	*MARKET DATA*	*MARKET DATA*	$10,526.60	$10,526.60	$6,315.96	$8,421.28	$78.95		Seattle, WA
1,000,000 to 2,499,999	$18,947.88	$14,737.24	*FEE TO BE DETERMINED*	*FEE TO BE DETERMINED*	$8,421.28	$8,421.28	$6,315.96	$7,368.62	$78.95	*FEES FOR*	Phoenix, AZ San Diego, CA Portland, OR Riverside, CA
500,000 to 999,999	$14,737.24	$10,526.60	*BY APPRAISAL OR OTHER*	*BY APPRAISAL OR OTHER*	$5,263.30	$6,315.96	$4,210.64	$5,789.63	$78.95	*THESE*	Las Vegas, NV Salt Lake City, UT Tucson, AZ Albuquerque, NM
300,000 to 499,999	$12,631.92	$8,421.28	*METHODS*	*METHODS*	$4,210.64	$5,263.30	$2,631.65	$2,631.65	$78.95	*USES*	Bakersfield, CA Spokane, WA
100,000 to 299,999	$6,315.96	$4,210.64	$2,526.38	$2,526.38	$3,157.98	$4,210.64	$2,105.32	$2,105.32	$78.95	*ARE DETERMINED*	Boise, ID Anchorage, AK Reno, NV Palm Springs, CA Yakima, WA Yuma, AZ Billings, MT
50,000 to 99,999	$3,157.98	$2,105.32	$1,263.19	$1,263.19	$1,263.19	$3,157.98	$1,052.66	$1,578.99	$78.95	*BY EACH REGION*	Grand Junction, CO Idaho Falls, ID Missoula, MT Santa Fe, NM Pocatello, ID Farmington, NM Roswell, NM
25,000 to 49,999	$1,578.99	$1,263.19	$1,052.66	$526.33	$1,052.66	$2,631.65	$631.60	$1,578.99	$78.95		Butte, MT
LESS THAN 25,000	$1,263.19	$947.39	$631.60	$105.27	$631.60	$2,631.65	$368.43	$1,578.99	$78.95		

**FEE FOR AM RADIO IS 70% OF THE FM SCHEDULED FEE*

Index Factor: 1.0220

36.21 - Exhibit 02

LISTING OF CITIES BY POPULATION STRATA

5,000,000 plus	2,500,000 to 4,999,999	1,000,000 to 2,499,999	500,000 to 999,999
Chicago, IL-IN-WI Los Angeles, CA New York, NY-NJ-CT (incl. Newark, NJ and Danbury, CT) Philadelphia, PA-NJ-DC-MD (incl. Trenton, NJ; Wilmington, DE; Coatesville, PA) San Francisco, CA (incl. Antioch, Oakland, and San Jose)	Atlanta, GA Boston, MA-NH (incl. Brockton, Haverhill, Lawrence, Salem and Lowell, MA and Nashua, NH) Dallas, TX (incl. Fort Worth) Detroit, MI-CAN (incl. Ann Arbor, MI and Windsor, CAN) Houston, TX Miami, FL (incl. Ft. Lauderdale) San Diego, CA-MEX (incl. Tijuana, MEX) Seattle, WA (Tacoma) Wash, DC-MD-VA	Baltimore, MD Buffalo, NY-CAN (incl. St. Catharines-Niagara Falls, CAN) Cincinnati, OH-KY-IN Cleveland, OH Columbus, OH Denver, CO El Paso, TX-NM-MEX (incl. Ciudad Jarez, MEX) Hartford, CT (incl. New Britain) Indianapolis, IN Kansas City, MO-KS Memphis, TN-AR-MS Milwaukee, WI Minneapolis, MN-WI (incl. St. Paul, MN) New Orleans, LA Norfolk, VA (incl. Portsmouth) Orlando, FL Phoenix, AZ Pittsburg, PA Portland, OR Riverside, CA (incl. San Bernadino) Sacramento, CA St. Louis, MO-IL St. Petersburg, FL (incl. Clearwater) San Antonio, TX San Diego, CA	Akron, OH Albany, NY (incl. Schenectady, and Troy) Albuquerque, NM Allentown, PA-NJ (incl. Bethlehem, PA) Austin, TX Birmingham, AL Calexico, CA-MEX (incl. Mexicali, MEX) Charlotte, NC-SC Dayton, OH El Paso, TX-NM Flint, MI Fresno, CA Grand Rapids, MI Honolulu, HI Jacksonville, FL Knoxville, TN Las Vegas, NV Louisville, KY-IN McAllen, TX (incl. Reynosa, MEX and Edinburg, TX) Nashville, TN New Haven, CT Oklahoma City, OK Omaha, NE-IA Providence, RI-MA Raleigh, NC Richmond, VA (incl. Petersburg) Rochester, NY Salt Lake City, UT Springfield, MA Syracuse, NY Tampa, FL Toledo, OH-MI Tucson, AZ Tulsa, OK West Palm Beach, FL

36.21 - Exhibit 02 - - Continued

LISTING OF CITIES BY POPULATION STRATA

300,000 to 499,999	100,000 to 299,999			
Augusta, GA-SC	Abilene, TX	Fayetteville, AR (incl. Springdale)	Merced, CA	Shreveport, LA-TX
Bakersfield, CA	Albany, GA	Fayetteville, NC	Middletown, OH	Sioux City, IA-NE-SD
Baton Rouge, LA	Altoona, PA (incl. Bethlehem)	Fitchburg, MA (incl. Leominster)	Midland, TX	Sioux Falls, SD
Beaumont, TX	Amarillo, TX	Florence, AL	Modesto, CA	South Bend, IN-MI
Bridgeport, CT	Anchorage, AK	Fort Collins, CO (incl. Loveland)	Monroe, LA	Spartanburg, SC
Brownsville, TX	Anderson, IN	Fort Myers, FL (incl. Cape Coral)	Monterey, CA (incl. Seaside)	Springfield, IL
Canton, OH	Annapolis, MD	Fort Pierce, FL	Montgomery, AL	Springfield, MO
Charleston, SC	Anniston, AL	Fort Smith, AR-OK	Muncie, IN	Springfield, OH
Chattanooga, TN-GA	Appleton, WI	Fort Walton Bch, FL	Muskegon, MI	Steubenville, OH-WV (incl. Weirton, WV)
Colorado Springs, CO	Asheville, NC	Frederick, MD	Myrtle Beach, SC (incl. Conway)	Tallahassee, FL
Columbia, SC	Athens, GA	Gainesville, FL	Naples, FL	Terre Haute, IN
Corpus Christi, TX	Atlantic City, NJ	Galveston, TX (incl. Texas City)	New Bedford, MA	Topeka, KS
Davenport, IA-IL	Battlecreek, MI	Gastonia, NC	Newburgh, NY	Tuscaloosa, AL
Des Moines, IA	Billings, MT	Green Bay, WI	New London, CT-RI (incl. Norwich, CT)	Tyler, Tx
Fort Wayne, IN	Biloxi, MS (incl. Gulfport)	Hagerstown, MD-PA-WV	Nogales, AZ-MEX (incl. Nogales, MEX)	Utica, NY (incl. Rome)
Greensboro, NC (incl. High Point)	Binghamton, NY-PA	Harlingen, TX	Ocala, FL	Vineland, NJ
Greenville, SC	Bloomington, IL (incl. Normal)	Hemet, CA	Oceanside, CA	Visalia, CA
Harrisburg, PA	Bloomington, IN	Hickory, NC	Odessa, TX	Waco, TX
Jackson, MS	Boise, ID	Houma, LA (incl. Thibodaux)	Olympia, WA	Waterbury, CT
Johnson City, TN-VA (incl. Kingsport and Bristol)	Boulder, CO (incl. Longmont)	Huntington, WV-KY-OH	Palm Springs, CA	Waterloo, IA
Lansing, MI	Bremerton, WA	Huntsville, AL	Panama City, FL	Wheeling, WV-OH
Laredo, TX-MEX (incl. Nuevo Laredo, MEX)	Brownsville, TX	Jackson, MS	Port Huron, MI-CAN (incl. Sarnia, CAN)	Wichita Falls, TX
Lexington, KY	Bryan, TX (incl. College Station)	Jacksonville, NC	Portland, ME	Williamsport, PA
Little Rock, AR	Burlington, NC	Johnstown, PA	Portsmouth, NH-ME (incl. Dover and Rochester, NH)	Wilmington, NC
McAllen, TX	Burlington, VT	Joplin, MO-KS	Poughkeepsie, NY	Winter Haven, FL
Madison, WI	Cedar Rapids, IA	Kalamazoo, MI	Provo, UT (incl. Orem)	Yakima, WA
Melbourne, FL (incl. Cocoa)	Champaign, IL (incl. Urbana)	Kannapolis, NC (incl. Concord)	Pueblo, CO	York, PA
Mobile, AL	Charleston, WV	Kenosha, WI	Racine, WI	Yuma, AZ-CA
Newport News, VA (incl. Hampton)	Clarksville, TN-KY	Killeen, TX	Reading, PA	
Ogden, UT	Columbus, GA-AL	Lafayette, IN (incl. W. Lafayette)	Redding, CA	
Oxnard, CA (incl. Ventura)	Corvallis, OR (incl. Albany)	Lafayette, LA	Reno, NV	
Pensacola, FL	Daytona Beach, FL	Lake Charles, LA	Richland, WA (incl. Kennewick and Pasco)	
Peoria, IL	Decatur, IL	Lakeland, FL	Roanoke, VA	
Rockford, IL-WI	Duluth, MN-WI	Lancaster, CA	Rockford, IL-WI	
Saginaw, MI (incl. Bay City and Midland)	Durham, NC (incl. Chapel Hill)	Lancaster, PA	Salem, OR	
Sarasota, FL (incl. Bradenton)	Elkhart, IN-MI	Laredo, TX	Salinas, CA	
Scranton, PA (incl. Wilkes-Barre)	Erie, PA	Las Cruces, NM	Santa Barbara, CA	
Spokane, WA-ID	Eugene, OR	Lima, OH	Santa Cruz, CA	
Springfield, MA	Evansville, IN-KY	Lincoln, NE	Santa Maria, CA	
Stockton, CA	Fairfield, CA (incl. Vacaville)	Longview, TX	Santa Rosa, CA	
Wichita, KS	Fall River, MA-RI	Lubbock, TX	Sault Ste. Marie, MI-CAN (incl. Sault Ste. Marie, CAN)	
Winston-Salem, NC	Fargo, ND-MN (incl. Moorhead, MN)	Lynchburg, VA	Savannah, GA	
Worcester, MA		Macon, GA		
Youngstown, OH-PA (incl. Warren, OH)		Manchester, NH		
		Mansfield, OH		
		Medford, OR		

36.21 - Exhibit 02 - - Continued

LISTING OF CITIES BY POPULATION STRATA

50,000 to 99,999			25,000 to 49,999	Less than 25,000
Alexandria, LA	Great Falls, MT	Paducah, KY-IL	Amherst, MA	Calexico, CA
Alliance, OH	Greeley, CO	Parkersburg, WV-OH	Ashtabula, OH	Nogales, AZ
Ames, IA	Hanover, PA	Pascagoula, MS-AL	Bartlesville, OK	Sault Ste. Marie, MI
Anderson, SC	Hattiesburg, MS	Pine Bluff, AR	Brunswick, ME	
Auburn, AL	Hazleton, PA	Pittsfield, MA	(incl. Bath)	
(incl. Opelika)	Hilo, HI	Pocatello, ID	Burlington, IA	
Auburn, NY	Holland, MI	Porterville, CA	Butte, MT	
Augusta, ME	Hot Springs, AR	Port Huron, MI	Clinton, IA-IL	
Bangor, ME	Idaho Falls, ID	Portsmouth, OH-KY	Clovis, NM	
Beckley, WV	Iowa City, IA	Pottstown, PA	E. Liverpool, OH-WV	
Bellingham, WA	Ithaca, NY	Pottsville, PA	Enid, OK	
Benton Harbor, MI	Jackson, TN	Quincy, IL	Findlay, OH	
(incl. St. Joseph)	Jamestown, NY	Rapid City, SD	Fort Dodge, IA	
Bismarck, ND	Janesville, WI	Richmond, IN-OH	Galesburg, IL	
Bowling Green, KY	Jefferson City, MO	Rochester, MN	Grand Island, NE	
Brunswick, GA	Jonesboro, AR	Rock Hill, SC	Greenville, MS	
Butler, PA	Kankakee, IL	Rocky Mount, NC	Hopkinsville, KY	
Cape Girardeau, MO	Kingston, NY	Rome, GA	Hutchinson, KS	
Carbondale, IL	Kokomo, IN	Roswell, NM	Laurel, MS	
Carlisle, PA	La Crosse, WI-MN	Rutland, VT	Leavenworth, KS	
Casper, WY	Lancaster, OH	St. Cloud, MN	Lewiston, ID-WA	
Charlottesville, VA	Latrobe, PA	St. Joseph, MO-KS	Manhattan, KS	
Cheyenne, WY	Lawrence, KS	Salisbury, MD-DE	Mankato, MN	
Chico, CA	Lawton, OK	Salisbury, NC	Marietta, OH-WV	
Clarksburg, WV	Lebanon, PA	San Angelo, TX	Marshall, TX	
Cleveland, TN	Lewiston, ME	Sandusky, OH	Minot, ND	
Columbia, MO	(incl. Auburn)	Sante Fe, NM	Natchez, MS-LA	
Columbus, IN	Lockport, NY	Sharon, PA-OH	Northampton, MA	
Columbus, MS	Logan, UT	Sheboygan, WI	Oil City, PA	
Concord, NH	Lompoc, CA	Sherman, TX	(incl. Franklin)	
Cumberland, MD-WV	Longview, WA-OR	(incl. Denison)	Salina, KS	
Danville, IL	Lufkin, TX	State College, PA	Stillwater, OK	
Danville, VA-NC	Manitowoc, WI	Sumter, SC	Vicksburg, MS-LA	
Davis, CA	Marion, IN	Taunton, MA	Waterville, ME	
Decatur, AL	Marion, OH	Temple, TX		
De Kalb, IL	Martinsville, VA	Texarkana, TX-AR		
De Land, FL	Meridian, MS	Titusville, FL		
Dothan, AL	Michigan City, IN-MI	Torrington, CT		
Dover, DE	Middletown, NY	Uniontown, PA		
Dubuque, IA-WI-IL	Missoula, MT	Valdosta, GA		
Eau Claire, WI	Monroe, MI	Venice, FL		
Elmira, NY	Montpelier, VT	Victoria, TX		
Eureka, CA	(incl. Barre)	Washington, PA		
(incl. Arcata)	Morgantown, WV-PA	Watertown, NY		
Fairbanks, AK	Morristown, TN	Watsonville, CA		
Fairmont, WV	Murfreesboro, TN	Wausau, WI		
Farmington, NM	Muskogee, OK	Yuba City, CA		
Florence, SC	Nampa, ID	(incl. Marysville)		
Fond du Lac, WI	(incl. Caldwell)	Zanesville, OH		
Freeport, TX	Napa, CA			
(incl. Lake Jackson)	Newark, OH			
Gadsden, AL	New Castle, PA			
Glen Falls, NY	New Iberia, LA			
Goldsboro, NC	Newport, RI			
Grand Forks, ND-MN	Oshkosh, WI			
Grand Junction, CO	Owensboro, KY			

BILLING CODE 3410–11–C

Chapter 40—Special Uses Administration

48—COMMUNICATIONS.

48.1—Communications Uses. This special-uses group includes a variety of communications use categories which utilize National Forest System lands. Typically the use occurs on a designated site and includes buildings, towers, and other support improvements.

1. *Authority.* Authorizations for all communications uses are issued under the authority of the Act of October 21, 1976 (43 U.S.C. 1761). This authority must be cited on all authorizations issued for communications uses.

2. *Objectives.* The objectives of communications use management are to authorize only those uses which meet forest land and resource management plan objectives; to facilitate the orderly development of sites to provide a safe and high quality communications environment; to maximize efficient use of the communications site; and to collect fair market value fees for communications uses on National Forest System lands.

3. *Policy.* Except for single uses which involve minor development (such as personal receive only use, resource monitoring use, or temporary use), communications sites must be designated before a new authorization for communications use can be issued. Communications site designation is a land use allocation and shall be made through the land and resource management planning process (FSM 1920).

Fees for communications uses shall be assessed in accordance with direction in chapter 30 of this Handbook.

Authorized officers shall not consider or issue authorizations that involve bartering or augmentation of goods or services, such as requiring the holder to provide free Government use of facilities or construction of other improvements not associated with the use.

4. *Responsibility.* The Regional Forester is responsible for approval of communications site plans; this responsibility may be delegated to the Forest Supervisor. Following communications site plan approval, Forest Supervisors have the authority to issue special-use permits, within the guidelines of the site plan. This responsibility may be delegated to the District Ranger.

5. *Definitions.* Definitions for other technical terms not listed in this section may be found in Federal Standard 1037A (FS 1037A), a standard glossary of telecommunication terms available from the General Services Administration.

Attenuation. Decrease in magnitude of current, voltage, or power of a signal in transmission between points. May be expressed in decibels (dB).

Band Width. A portion of the frequency spectrum authorized for use by a specific license; measured in kilohertz (KHz) or megahertz (MHz). Of concern is the amount of spectrum authorized; that is, a small amount (15 KHz) for two-way radio, a larger amount (6 MHz) for television broadcast, and a very large amount (many MHz) for radar.

Base Rent. The fee amount determined by the highest value use in a communications site facility. Base rent is applicable only to a facility owner's fee. If a facility owner or facility managers' fee is equal to or greater than any other schedule fee in the facility, the facility owner or facility manager's use is the base fee.

Beam Path. Direction or corridor of energy radiated from a directional antenna. Usually refers to microwave, which requires an unobstructed point-to-point corridor.

Communications Site. An area of National Forest System land designated through the land and resource management planning process. A communications site may be limited to a single communications facility, but most often encompasses more than one. Each site is identified by name; usually a local prominent landmark, such as Bald Mountain Communications Site.

Continuous Broadcast or Constant Carrier. A continuously operating transmitter, not a microwave.

Customer. An individual, business, organization, or agency that is paying a facility owner or tenant for communications services and is not re-selling communication services to others. Private (other use category) and internal (private mobile radio services category) communication uses leasing space in a building and not re-selling communication services to others are considered customers for fee calculation purposes.

Effective Radiated Power. The power supplied to the antenna multiplied by the relative gain of the antenna in a given direction.

Effective Receiver Sensitivity. The signal level required to detect and reproduce usable information from the local electromagnetic environment.

Electromagnetic Compatibility. The ability of telecommunications equipment, subsystems, or system to operate in their intended operational environments without suffering or causing unacceptable degradation because of electromagnetic radiation or response. Refers to coexistence of different types of equipment in the same area.

Facility. A building, tower, and/or other physical improvement that is built, installed, or established to house and support authorized communications uses.

Facility Manager. The holder of a Forest Service communications use authorization who leases space for other communication users. A facility manager does not directly provide communications services to third parties.

Frequency Assignment. The process of authorizing a specific frequency, group of frequencies, or frequency band to be used at a certain location under specific conditions such as band width, power, azimuth, duty cycle, or modulation.

Gain. The increase in effective signal power in transmission under stated conditions. (Note: Power gain is expressed in decibels.)

Harmful Interference. Any transmission, radiation, or induction which specifically degrades, obstructs, or interrupts the services provided by such stations.

High Gain Antenna. An antenna whose effective radiated power in a given direction is greater than the input power.

Microwave. High frequencies commonly between 900 and 30,000 megahertz.

Mobile Station. A two-way radio station designed for operation when in motion or at unspecified points.

Noise. An undesired disturbance within the useful frequency band.

Noise Floor. Existing volume (magnitude) of electronic noise power measured in decibels and referred to as an electronic value (such as milliwatt).

Omnidirectional Antenna. An antenna whose radiation pattern is nondirectional in azimuth (meaning it radiates or receives in 360 degrees).

Point-to-point Radio Communications. Radio communications between two fixed stations.

Polarization (Polarity). Term referring to antenna radiation polarity, which can be horizontal, vertical, or circular.

Radiation Pattern. A graphical representation of power radiation of an antenna, usually shown for the two principal planes, vertical and horizontal.

Receiver Desensitivity. A consequence of undesired reradiated frequency energy entering a receiver. Reduces the ability to receive weaker signals.

Repeater. A device that simultaneously transmits all properly coded input signals received, or in the case of pulses, amplifies, reshapes,

retimes, or performs a combination of any of these functions on an input signal for retransmission.

Reradiation. Energy radiated by a galvanic junction in a nonlinear manner. Sources may include radio equipment, antennas, metallic debris, defective structural components, unterminated antenna cables, or passive repeater.

Tenant. A communications user who rents space in a communications facility and operates communications equipment for the purpose of re-selling communications services to others for profit. Tenants may hold separate authorizations, without subtenancy rights, at the full schedule fee based on the category of use.

Trunking. A system which allows a number of radio channels to be operated as a single system allowing service to multiple users.

Wave guide. A hollow metallic conduit within which electromagnetic waves may be propagated.

7. *Authorization and Administration.*

(4) *Issuance of Authorizations.* Use Form FS–2700–4a, Communications Use Lease, to authorize use of National Forest System lands for communications uses by facility owners and facility managers. Use Form FS–2700–4, Special Use Permit, to authorize tenant and customer use in Federal facilities and charge the full schedule fee for that use (ch. 30).

Tenants and customers in non-Federal facilities are not required to have a separate authorization. However, tenants and customers in non-Federal facilities may retain their current authorizations until they expire at the end of the term. In these situations, charge the tenant or customer the full schedule rate for their type of use and population served (ch. 30). Do not issue new authorizations for tenants and customers in non-Federal facilities.

(5) *Fee Calculation.* Calculate fees for communications uses in accordance with the direction in chapter 30. Fees for new sites may be established using a prospectus.

48.11—Broadcast Uses.

48.11a—Television Broadcast. This category includes facilities licensed by the Federal Communications Commission (FCC) that broadcast UHF and VHF audio and video signals for general public reception and the communications equipment directly related to the operation, maintenance, and monitoring of the use.

Users include television stations (major and independent networks) that generate income through commercial advertisement and public television stations whose operations are supported by subscriptions, grants, and donations. Broadcast areas may overlap State boundaries. This category of use relates only to primary transmitters and not to any rebroadcast systems such as translators, transmitting devices such as microwave relays serving broadcast translators, or holders licensed by the FCC as low power television (LPTV).

48.11b—AM and FM Radio Broadcast. This category includes FCC-licensed facilities that broadcast AM and FM audio signals for general public reception and the communications equipment directly related to the operation, maintenance, and monitoring of the use.

Users include radio stations which generate revenues from commercial advertising and public radio stations whose revenues are supported by subscriptions, grants, and donations. Broadcast areas often overlap State boundaries. This category of use relates only to primary transmitters and not to any rebroadcast systems such as translators, microwave relays serving broadcast translators, or holders licensed by the FCC as low power FM radio.

48.11c—Cable Television. This category includes FCC-licensed facilities that transmit video programming to multiple subscribers in a community over a wired or wireless network, and the communications equipment directly related to the operation, maintenance, or monitoring of the use. These systems normally operate as a commercial entity within an authorized franchise area. The category does not include rebroadcast devices, or personal or internal antenna systems such as private systems serving hotels or residences.

48.11d—Broadcast Translator, Low Power Television, and Low Power FM Radio. This category of use consists of FCC-licensed translators, low power television (LPTV), low power FM radio (LPFM), and communications equipment directly related to the operation, maintenance, or monitoring of the use. Microwave facilities used in conjunction with the systems are included in the category. Translators receive a television or FM radio broadcast signal and rebroadcast it on a different channel or frequency for local reception. In some cases the translator relays the signal to another amplifier or translator. Low power television and FM radio stations are broadcast translators that originate programming. This category of use includes translators associated with public telecommunications service.

48.12—Non-Broadcast Uses.

48.12a—Commercial Mobile Radio Service (CMRS) and Facility Manager. This category of use includes FCC-licensed facilities providing mobile radio communications service to individual customers, and the communications equipment directly related to the operation, maintenance, or monitoring of the use. Examples of mobile radio systems in this category are two-way voice and paging services such as community repeaters, trunked radio (specialized mobile radio), two-way radio dispatch, public switched network (telephone/data) interconnect service, microwave communications link equipment, and internal and private communications uses not sold for a profit (that is, private mobile radio, internal microwave, and so forth). Some holders may not hold FCC licenses or operate communications equipment, but they may lease building, tower, and related facility space as part of their business enterprise and act as facility managers.

48.12b—Cellular Telephone. Cellular telephone includes holders of FCC-licensed systems and related technologies for mobile communications that use a blend of radio and telephone switching technology to provide public switched network services for fixed and mobile users within a geographic area. The system consists of cell sites containing transmitting and receiving antennas, cellular base station radio, telephone equipment, and often microwave communications link equipment, and the communications equipment directly related to the maintenance and monitoring of the use.

48.12c—Private Mobile Radio Service. This use category includes holders of FCC-licensed private mobile radio systems primarily used by a single entity for the purposes of mobile internal communications, and the communications equipment directly related to the operation, maintenance, or monitoring of the use. The communications service is not sold to others and is limited to the user. Services generally include private local radio dispatch, private paging services, and ancillary microwave communications equipment for the control of the mobile facilities.

48.12d—Microwave. This use includes holders of FCC-licensed facilities used for long-line intrastate and interstate public telephone, television, information, and data transmissions, or used by pipeline and power companies, railroads, and land resource management companies in support of the holder's primary business. Also included is communications equipment directly related to the operation, maintenance, or

monitoring of the use, such as mobile radio service.

48.12e—Local Exchange Network. This use refers to a radio service which provides basic telephone service, primarily to rural communities.

48.12f—Passive Reflector. Passive reflectors include various types of nonpowered reflector devices used to bend or ricochet electronic signals between active relay stations or between an active relay station and a terminal. A passive reflector commonly serves a microwave communications system. The reflector requires point-to-point line-of-sight with the connecting relay stations, but does not require electric power. Maintenance is minimal and reflectors seldom require site visits for maintenance or monitoring.

48.13—Other Communications Uses. This category includes holders of FCC-licensed private communications uses such as amateur radio; personal/private receive-only antennas designed for the reception of electronic signals to serve private homes; natural resource and environmental monitoring equipment used by weather stations, seismic stations, and snow measurement courses; and other small, low-power devices used to monitor or control remote activities. These facilities are personally owned and not operated for profit.

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Tuesday
December 30, 1997

Part VIII

Department of Education

Bilingual Education: Career Ladder Program; FY 1998 New Awards Applications; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.195E]

Bilingual Education: Career Ladder Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the applicable regulations governing this program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a grant under this program.

Purpose of Program: This program provides grants to upgrade the qualifications and skills of noncertified educational personnel, especially educational paraprofessionals, to meet high professional standards, including certification and licensure as bilingual teachers and other educational personnel who serve limited English proficient students, and to help recruit and train secondary students as bilingual education teachers and other educational personnel to serve limited English proficient students.

Eligible Applicants: (1) One or more institutions of higher education (IHEs) that have entered into consortia arrangements with local educational agencies (LEAs) or State educational agencies (SEAs), to achieve the purposes of those sections. Consortia may include community-based organizations or professional education organizations.

Deadline for Transmittal of Applications: February 23, 1998

Deadline for Intergovernmental Review: April 23, 1998

Available Funds: $7.2 million.

Estimated Range of Awards: $150,000–$250,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 36.

Note: The Department of Education is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

(b) The regulations in 34 CFR Part 299, General Provisions, Elementary and Secondary Education Act.

Description of Program: The statutory authorization for this program, and the application requirements that apply to this competition, are set out in sections 7144 and 7146–7150 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994) (the Act) (20 U.S.C. 7474 and 7476–7480). Funds under this program may be used to provide for the development of bilingual education career ladder program curricula appropriate to the needs of consortia participants; assistance for stipends and costs related to tuition fees and books for coursework required to complete degree and certification requirements for bilingual education teachers; and programs to introduce secondary school students to careers in bilingual education teaching that are coordinated with other activities assisted under this program. Activities conducted under this program must assist educational personnel in meeting State and local certification requirements for bilingual education and, wherever possible, must lead to the awarding of college or university credit.

Priorities: Competitive Priority 1. The Secretary, under 34 CFR 75.105(c)(2)(i) and 34 CFR 299.3(b), gives preference to applications that meet the following competitive priority. The Secretary awards up to 3 points for an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria for the program:

Projects that will contribute to a systemic educational reform in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture, and are made an integral part of the Zone's or Community's comprehensive community revitalization strategies.

Note: A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided in the appendix to this notice.

Competitive Priority 2. Under 34 CFR 75.105 (c)(2)(ii) and section 7144(d) of the Act, the Secretary gives a competitive preference to applications that meet the following priority:

Applications that propose to provide for participant completion of baccalaureate and master's degree teacher education programs, and certification requirements and may include effective employment placement activities; the development of teacher proficiency in English as a second language, including demonstrating proficiency in the instructional use of English and, as appropriate, a second language in classroom contexts; coordination with programs for the recruitment and retention of bilingual students in secondary and postsecondary programs training to become bilingual educators; and the applicant's contribution of additional student financial aid to participating students.

The Secretary selects applications that meet this priority over applications of comparable merit that do not meet the priority.

Invitational Priorities. The Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority receives no competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Applicants that propose to collaborate with 2-year institutions of higher education to develop or improve teacher preparation programs for bilingual paraprofessionals.

Selection Criteria. (a)(1) The Secretary uses the following selection criteria in 34 CFR 75.210 to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(a) *Need for project.* (10 points) (1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude or severity of the problem to be addressed by the proposed project.

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and the magnitude of those gaps or weaknesses.

(Authority: 34 CFR 75.210 (a)(2)(i) and (v))

(b) *Quality of the project design.* (50 points) (1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the proposed project is designed to build capacity and

yield results that will extend beyond the period of Federal financial assistance.

(iv) The extent to which the proposed activities constitute a coherent, sustained program of training in the field.

(v) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(vi) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(vii) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(viii) The extent to which fellowship recipients or other project participants are to be selected on the basis of academic excellence.

(Authority: 34 CFR 75.210(c)(2)(i), (ii), (iv), (xii), (xiii), (xvi), (xviii), and (xxiii))

(c) *Quality of project services.* (15 points) (1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been under-represented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(ii) The extent to which the training or professional development services to be provided by the proposed project are likely to alleviate the personnel shortages that have been identified or are the focus of the proposed project.

(iii) The extent to which the services to be provided by the proposed project are focused on those with greatest need.

(Authority: 34 CFR 75.210(d)(2) and (3)(v), (vi), and (xi))

(d) *Quality of project personnel.* (5 points) (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factor: The qualifications, including relevant training and experience, of key project personnel.

(Authority: 34 CFR 75.210(e)(2) and (3)(ii))

(e) *Quality of the management plan.* (5 points) (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factor: The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(Authority: 34 CFR 75.210(g)(2)(i)))

(f) *Quality of the project evaluation.* (15 points) (1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(Authority: 34 CFR 75.210(h)(2)(iii), (iv), and (vi)).

Intergovernmental Review of Federal Programs. This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on October 7, 1997 (62 FR 52448 through 52450).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.195A, U.S. Department of Education, Room 6213, 600 Independence Avenue, SW., Washington, D.C. 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.

Instructions for Transmittal of Applications: (a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and three copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.195E), Washington, D.C. 20202–4725.

(2) Hand-deliver the original and three copies of the application by 4:30 p.m. (Washington, D.C. time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.195E), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C.

(b) An applicant must show one of the following as 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.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number and suffix letter, if any, of the competition under which the application is being submitted.

Application Instructions and Forms: The appendix to this notice contains the following forms and instructions, plus a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act, a checklist for applicants, various assurances, certifications, and required documentation. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

Part III: Application Narrative.

Additional Materials:

a. Estimated Public Reporting Burden.

b. Group Application Certification.

c. Participant Data.

d. Project Documentation.

e. Program Assurances.

f. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

g. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

h. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: This form is intended for the use of grantees and should not be transmitted to the Department.)

i. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. The document has been marked to reflect statutory changes. See the notice published by the Office of Management and Budget in the **Federal Register** (61 FR 1413) on (January 19, 1996).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. All applicants must submit ONE original signed application, including ink signatures on all forms and assurances, and THREE copies of the application. Please mark each application as ''original'' or ''copy''. No grant may be awarded unless a completed application has been received.

FOR FURTHER INFORMATION CONTACT: Cynthia Ryan (202) 205–8842 or Petraine Johnson (202) 205–8766 (for applicants located in Western States); Mahal May (202) 205–8727 or Steve Van Pelt (202) 205–8732 (for applicants located in Eastern States); and Carol Manitaras (202) 205–9729 (for applicants located in Midwestern States), U.S. Department of Education, 600 Independence Avenue, SW., Room 5090, Switzer Building, Washington, D.C. 20202–6510. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this notice in an alternate format (e.g., braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

Electronic Access to this Document. Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 7474.

Dated: December 23, 1997.

Delia Pompa,

Director, Office of Bilingual Education and Minority Languages Affairs.

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1885–0528, Exp. Date: 4/30/98. The time required to complete this information collection is estimated to average 80 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, D.C. 20202–4651. *If you have any comments or concerns regarding the status of your individual submission of this form, write directly to:* Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 600 Independence Avenue, SW., Washington, D.C. 20202–6510.

The following forms and other items must be included in the application:

1. Application for Federal Assistance (SF 424).

2. Group Application Certification (if applicable).

3. Budget Information (ED Form No. 524).

4. Itemized Budget for each year.

5. Participant Data.

6. Project Documentation: Section A—Copy of Transmittal Letter to SEA requesting SEA to comment on application; Section B—Documentation of Empowerment Zone or Enterprise Community—if applicable.

7. Program Assurances.
8. Non-Construction Programs (SF 424B).
9. Certifications Regarding Lobbying; Debarment Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).
10. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014).
11. Disclosure of Lobbying Activities (SF–LLL).
12. Table of Contents.
13. Application Narrative (not to exceed 30 pages including abstract, see instructions below).
14. One original and three copies of the application for transmittal to the Department's Application Control Center.

Mandatory Page Limits for the Application Narrative

The application narrative must not exceed the equivalent of 30 pages, using the following standards: (1) These pages must be double-spaced and printed on one side only. (2) A legible font size and adequate margins should be used. (3) The narrative must be paginated. (4) The narrative portion of the application package, including abstract, charts, graphs, tables, position descriptions, illustrations, and appendices, must not exceed the 30-page limit. The narrative section should begin with an abstract that includes a short description of the population to be served by the project, project objectives, planned project activities, and priorities addressed. The page limit applies only to item 13 and not to the other items in the checklist. APPLICATIONS WITH A NARRATIVE SECTION THAT EXCEEDS THE PAGE LIMIT WILL NOT BE CONSIDERED FOR FUNDING.

Application Narrative

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Provide position descriptions, not resumes.

Budget

Budget line items must support the goals and objectives of the proposed project and be directly applicable to the program design and all other project components.

Final Application Preparation

Use the above checklist to verify that all items are addressed. Prepare one original with an original signature, and include three additional copies. Do not use elaborate bindings or covers. The application package must be mailed to the Application Control Center (ACC) and postmarked by the deadline date of February 23, 1998.

Submission of Application to State Educational Agency

Section 7146(a)(4) of the Act (Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994, Public Law 103–382) requires all applicants except schools funded by the Bureau of Indian Affairs to submit a copy of their application to their State educational agency (SEA) for review and comment (20 U.S.C. 7476(a)(4)). Section 75.156 of the Education Department General Administrative Regulations (EDGAR) requires these applicants to submit their application to the SEA on or before the deadline date for submitting their application to the Department of Education. This section of EDGAR also requires applicants to attach to their application a copy of their letter that requests the SEA to comment on the application (34 CFR 75.156). A copy of this letter should be attached to the Project Documentation Form contained in this application package.

Applicants that do not submit a copy of their application to their SEA will not be considered for funding.

Notice to All Applicants

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. **All applicants for new awards must include information in their applications to address this new provision in order to receive funding under this program.**

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirements of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how its intends to conduct ''outreach'' efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in

responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801–0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

Empowerment Zones and Enterprise Communities

Empowerment Zone (EZ)

California: Los Angeles
California: Oakland
Georgia: Atlanta
Illinois: Chicago
Kentucky: Kentucky Highlands*
Maryland: Baltimore
Massachusetts: Boston
Michigan: Detroit
Mississippi: Mid Delta*
Missouri/Kansas: Kansas City, Kansas City
New York: Harlem, Bronx
Ohio: Cleveland
Pennsylvania/New Jersey: Philadelphia, Camden
Texas: Houston
Texas: Rio Grande Valley

Enterprise Community (EC)

Alabama: Birmingham
Alabama: Chambers County*
Alabama: Greene, Sumter Counties*
Arizona: Phoenix
Arizona: Arizona Border*
Arkansas: East Central*
Arkansas: Mississippi County*
California: L.A., Huntington Park
California: San Diego
California: San Francisco, Bayview, Hunter's Point
California: Watsonville*
Colorado: Denver
Connecticut: Bridgeport
Connecticut: New Haven
Delaware: Wilmington
District of Columbia: Washington
Florida: Jackson County*
Florida: Tampa
Florida: Miami, Dade County
Georgia: Albany
Georgia: Central Savannah*
Georgia: Crisp, Dooley Counties*
Illinois: East St. Louis
Illinois: Springfield
Indiana: Indianapolis
Iowa: Des Moines
Kentucky: Louisville
Louisiana: Northeast Delta*
Louisiana: Macon Ridge*
Louisiana: New Orleans
Louisiana: Ouachita Parish
Massachusetts: Lowell
Massachusetts: Springfield
Michigan: Five Cap*
Michigan: Flint

Enterprise Community (EC)

Michigan: Muskegon
Minnesota: Minneapolis
Minnesota: St. Paul
Mississippi: Jackson
Mississippi:North Delta*
Missouri: East Prairie*
Missouri: St. Louis
Nebraska: Omaha
Nevada: Clarke County, Las Vegas
New Hampshire: Manchester
New Jersey: Newark
New Mexico: Albuquerque
New Mexico: Moro, Rio Arriba, Taos Counties*
New York: Albany, Schenectady, Troy
New York: Buffalo
New York: Newburgh, Kingston
New York: Rochester
North Carolina: Charlotte
North Carolina: Halifax, Edgecombe, Wilson Counties*
North Carolina: Robeson County*
Ohio: Akron
Ohio: Columbus
Ohio: Grater Portsmouth *
Oklahoma: Choctaw, McCurtain Counties*
Oklahoma: Oklahoma City
Oregon: Josephine*
Oregon: Portland
Pennsylvania: Harrisburg
Pennsylvania: Lock Haven*
Pennsylvania: Pittsburgh
Rhode Island: Providence
South Dakota: Deadle, Spink Counties*
South Carolina: Charleston
South Carolina: Williamsburg County*
Tennessee: Fayette, Haywood Counties*
Tennessee: Memphis
Tennessee: Nashville
Tennessee/Kentucky: Scott, McCreary Counties*
Texas: Dallas
Texas: El Paso
Texas: San Antonio
Texas: Waco
Utah: Ogden
Vermont: Burlington
Virginia: Accomack*
Virginia: Norfolk
Virginia: Lower Yakima*
Washington: Seattle
Washington: Tacoma
West Virginia: West Central*
West Virginia: Huntington
West Virginia: McDowell*
Wisconsin: Milwaukee

*Denotes rural designee

Questions and Answers

Does the Career Ladder Program have specific evaluation requirements?

Yes, the evaluation requirements are described in Section 7149 of Title VII of ESEA, 20 U.S.C. 7479.

What requirements must grantees meet related to teacher certification?

The Title VII statute requires grantees to assist educational personnel in meeting State and local certification requirements. 20 U.S.C. 7477. However, because certification requirements vary among States, applicants are given flexibility in designing activities that lead to meeting State and local certification requirements.

May program budgets include costs for items other than student tuition and fees?

Project budgets should reflect the proposed program activities. In addition to student support costs, budget items may include costs for personnel, supplies or equipment, and other reasonable and necessary costs to support developmental activities.

What information may be helpful in preparing the application narrative for a Career Ladder Program?

In responding to the selection criteria applicants may wish to consider the following questions as a guide for preparing application narrative.

- What are the specific responsibilities of districts, schools, institutions of higher education and other partnership organizations in planning, implementing and evaluating the proposed program? How is the program linked to the school district's overall professional development plan? What resources and support will each of the consortia members provide? How will resources be integrated to ensure maximum effectiveness of the program and to promote capacity building and long-range collaboration?
- How does the training curricula reflect high standards for pedagogy, content, and proficiency in English and a second language to ensure that participants are effectively prepared to provide instruction and support to LEP students?
- How will the program assist in systemically reforming policies and practices in the target schools and in the

IHE related to the preparation of new teachers, the induction of new bilingual teachers, clinical experiences for new bilingual teachers and other educational personnel, or professional development opportunities for all teachers?

- What special selection criteria will the applicant adopt to ensure that individuals selected to participate in the program hold promise for successfully completing program requirements?
- What special support will be provided to participants by experienced bilingual teachers, higher education faculty, and school administrators to guide them during their period of induction?
- How will the instructional responsibilities of participants be balanced with appropriate professional development, support and planning time?
- How will clinical experiences for preservice participants be structured to ensure that they are well-supervised, of sufficient duration and in a setting which provides opportunities for participants to experience a variety of effective bilingual education instructional methods and approaches?
- How is the training curriculum based on current research related to effective teaching and learning? What evidence of effectiveness supports the training model?
- What performance indicators will the proposed program use to support the effectiveness of the program related to, for example: improved teaching practices; participants' effectiveness in the instructional setting; improved performance on National or State benchmark tests; reduction in the number of new bilingual teachers leaving the profession; improvement of graduation rates?
- How will the program evaluation incorporate strategies for assessing the progress and performance of participants; communicating meaningful, regular and timely feedback to participants; improving the quality of the training program; documenting and identifying exemplary program features and successful strategies; and reporting on specific data related to the number of participants completing the program and the number of graduates placed in the instructional setting?

In addition, applicants may wish to consider the Department of Education Professional Development Principles in planning a Career Ladder Program

The following are the professional development principles: Focuses on teachers as central to student learning, yet includes all other members of the school community; focuses on individual, collegial and organizational improvement; respects and nurtures the intellectual and leadership capacity of teachers, principals, and others in the school community; reflects best available research and practice in teaching, learning, and leadership; enables teachers to develop further expertise in subject content, teaching strategies, uses of technologies, and other essential elements in teaching to high standards; promotes continuous inquiry and improvement embedded in the daily life of schools; is planned collaboratively by those who will participate in and facilitate that development; requires substantial time and other resources; is driven by a coherent long-term plan; is evaluated ultimately on the basis of its impact on teacher effectiveness and student learning; and uses this assessment to guide subsequent professional development efforts.

What other information may be helpful in applying for a Career Ladder Program?

Applicants are reminded that they must submit a copy of their application to the SEA for review and comment. In addition, applicants must submit a copy of their application to the State Single Point of Contact to satisfy the requirements of Executive Order 12372.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	*Preapplication*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address *(give city, county, state, and zip code)*:

Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 CFR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

Authorized Representative					Name of Institution/ Organization
Typed Name	Title	Signature	Date Signed	Telephone Number (including Area Code)	

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

PROJECT DOCUMENTATION

Note: Submit the appropriate documents and information as specified below for the following programs.

- Teachers and Personnel Grants
- Career Ladder Program

Section A

A copy of the applicant's transmittal letter requesting the appropriate State educational agency to comment on the application.

Section B

If applicable, identify on the line below the Empowerment Zone, Supplemental Empowerment Zone, or Enterprise Community that the proposed project will serve.
(See the competitive priority and the list of designated Empowerment Zones in previous sections of this application package.)

_____

PARTICIPANT DATA

Note: This form must be completed by applicants under the following programs:

- **Teachers and Personnel Grants**
- **Career Ladder Program**

- **Number of proposed participants in each of the following categories**

Preservice Teachers	_____
Inservice Teachers	_____
Other Educational Personnel (Specify type of personnel below)	_____
_____	_____
_____	_____

- **Degree level(s) to be attained (if applicable)** _____

_____

- **Certification Type(s) to be attained** _____

_____

- **Language(s) of Participants (other than English)** _____

PROGRAM ASSURANCES

NOTE: The authorizing statute requires applicants under certain programs to provide assurances. These assurances are specified below under the relevant programs. If your application pertains to any of these programs, this form must be completed.

As the duly authorized representative of the applicant, I certify that the applicant, in regard to the program relevant to this application:

- Teachers and Personnel Grants
- Career Ladder Program

Will include, if applicable, as part of the project implementing a master's or doctoral-level program, a training practicum in a local school program serving children and youth of limited English proficiency.
(Authority: 20 U.S.C. 7426(g)(3)

_____
Authorized Representative

Name: _____

Signature: _____

Typed Name: _____

Date: _____

Applicant Organization: _____

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APP LICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant,' " person," "primary covered transaction," " principal," proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. **Type of Federal Action:** ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. **Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	3. **Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter ____ date of last report
4. **Name and Address of Reporting Entity:** ☐ Prime ☐ Subawardee Tier _____, *if known:* **Congressional District,** *if known:*	5. **If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime:** **Congressional District,** *if known:*	
6. **Federal Department/Agency:**	7. **Federal Program Name/Description:** CFDA Number, *if applicable*:	
8. **Federal Action Number,** *if known:*	9. **Award Amount,** *if known:* $	
10. a. **Name and Address of Lobbying ~~Entity~~ Registrant** *(if individual, last name, first name, MI):*	b. **Individuals Performing Services** *(including address if different from No. 10a) (last name, first name, MI):*	
~~11. **Amount of Payment** *(check all that apply):*~~ ~~$ _____ ☐ actual ☐ planned~~	~~13. **Type of Payment** *(Check all that apply):*~~ ~~☐ a. retainer~~ ~~☐ b. one-time fee~~ ~~☐ c. commission~~ ~~☐ d. contingent fee~~ ~~☐ e. deferred~~ ~~☐ f. other; specify: _____~~	
~~12. **Form of Payment** *(check all that apply):*~~ ~~☐ a. cash~~ ~~☐ b. in-kind; specify: nature _____ value _____~~		
~~14. **Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:**~~ ~~*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*~~		
~~15. **Continuation Sheet(s) SF-LLL attached:** ☐ Yes ☐ No~~		
16. **Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.**	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:**	
~~**Federal Use Only**~~	**Authorized for Local Reproduction** **Standard Form - LLL**	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate~~. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and conract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the ~~lobbying entity~~ registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

~~11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this a material change report, enter the cumulative amount of payment made or planned to be made.~~

~~12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.~~

~~13. Check the appropriate box(es). Check all boxes that apply. If other specify nature.~~

~~14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~

~~15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions

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federal register

Tuesday
December 30, 1997

Part IX

Department of Education

Bilingual Education: Teachers and Personnel Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

DEPARTMENT OF EDUCATION

[CFDA No.: 84.195A]

Bilingual Education: Teachers and Personnel Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

Note to Applicants

This notice is a complete application package. Together with the statute authorizing the program and the applicable regulations governing this program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an award under this program. The statutory authorization for this program, and the application requirements that apply to this competition, are set out in sections 7143 and 7146–7149 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994) (the Act) (20 U.S.C. 7473 and 7476–7479).

Purpose of Program

This program provides grants for preservice and inservice professional development for bilingual education teachers, administrators, pupil services personnel, and other educational personnel who are either involved in, or preparing to be involved in, the provision of educational services for children and youth of limited English proficiency.

Eligible Applicants

(1) One or more institutions of higher education (IHEs) which have entered into consortia arrangements with local educational agencies (LEAs) or State educational agencies (SEAs), to achieve the purposes of those sections. (2) SEAs and LEAs for inservice professional development programs.

Deadline for Transmittal of Applications: February 23, 1998.

Deadline for Intergovernmental Review: April 23, 1998.

Available Funds: $4.9 million.

Estimated Range of Awards: $150,000–$250,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 25.

Note: The Department of Education is not bound by any estimates in this notice.

Project Period: 60 months.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

(b) The regulations in 34 CFR part 299, General Provisions, Elementary and Secondary Education Act, published on May 22, 1997, in the **Federal Register** (62 FR 2827)

Description of Program

Funds under this program are to provide for preservice and inservice professional development for bilingual education teachers and other educational personnel. Activities will assist educational personnel in meeting State and local certification requirements for bilingual education and, wherever possible, will lead to the awarding of college or university credit.

Priorities

Competitive Priority 1

The Secretary, under 34 CFR 75.105(c)(2)(i) and 34 CFR 299.3(b), gives preference to applications that meet the following competitive priority. The Secretary awards up to 3 points for an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria for the program:

Projects that will contribute to a systemic educational reform in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture, and are made an integral part of the Zone's or Community's comprehensive community revitalization strategies.

Note: A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided at the end of this notice.

Competitive Priority 2

Under 34 CFR 75.105 (c)(2)(ii) and section 7143(b) of the Act, the Secretary gives a competitive preference to applications that meet the following priority:

Institutions of higher education, in consortia with local or State educational agencies, that offer degree programs that prepare new bilingual education teachers in order to increase the availability of educators to provide high-quality education to limited English proficient students.

The Secretary selects applications that meet this priority over applications of comparable merit that do not meet the priority.

Invitational Priorities

The Secretary is particularly interested in applications that meet one of the following invitational priorities in the next paragraphs. However, an application that meets these invitational priorities receives no competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Applicants that propose to provide special support for new bilingual teachers during their initial teaching years.

Applicants that propose to improve teacher preparation programs in institutions of higher education to better prepare all teachers to meet the needs of LEP students.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria in 34 CFR 75.210 to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(a) *Need for project.* (10 points) (1) The Secretary considers the need for the proposed project. (2) In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude or severity of the problem to be addressed by the proposed project.

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and the magnitude of those gaps or weaknesses.

(Authority: 34 CFR 75.210 (a)(2)(i) and (v))

(b) *Quality of the project design.* (50 points) (1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(iv) The extent to which the proposed activities constitute a coherent,

sustained program of training in the field.

(v) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(vi) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(vii) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(viii) The extent to which fellowship recipients or other project participants are to be selected on the basis of academic excellence.

(Authority: 34 CFR 75.210(c)(2)(i), (ii), (v), (xii), (xiii), (xvi), (xviii), and (xxiii))

(c) Quality of project services. (15 points) (1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been under represented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(ii) The extent to which the training or professional development services to be provided by the proposed project are likely to alleviate the personnel shortages that have been identified or are the focus of the proposed project.

(iii) The extent to which the services to be provided by the proposed project are focused on those with greatest need.

(Authority: 34 CFR 75.210(d)(2) and (3)(v), (vi), and (xi))

(d) *Quality of project personnel.* (5 points) (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factor: The qualifications, including relevant training and experience, of key project personnel.

(Authority: 34 CFR 75.210(e)(2) and (3)(ii)

(e) *Quality of the management plan.* (5 points) (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factor: The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(Authority: 34 CFR 75.210(g)(2)(i))

(f) *Quality of the project evaluation.* (15 points) (1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(Authority: 34 CFR 75.210(h)(2)(iii), (iv), and (vi)).

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on October 7, 1997 (62 FR 52448).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.195A, U.S. Department of Education, Room 6213, 600 Independence Avenue, SW., Washington, D.C. 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and three copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.195A), Washington, D.C. 20202–4725 or

(2) Hand-deliver the original and three copies of the application by 4:30 p.m. (Washington, D.C. time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.195A), Room #3633, Regional Office Building #3, Third and D Streets, SW., Washington, D.C.

(b) An applicant must show one of the following as 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.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number and suffix letter, if any, of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this notice is divided into three parts containing the following forms and instructions, plus a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act, a checklist for applicants, various assurances, certifications, and required documentation. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

Part III: Application Narrative.

Additional Materials:

a. Estimated Public Reporting Burden.

b. Group Application Certification.

c. Participant Data.

d. Project Documentation.

e. Program Assurances.

f. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

g. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

h. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: This form is intended for the use of grantees and should not be transmitted to the Department

i. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. The document has been marked to reflect statutory changes. See the notice published by the Office of Management and Budget in the **Federal Register** (61 FR 1413) on (January 19, 1996).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. All applicants must submit one original signed application and three copies of the application. Please mark each application as ''original'' or ''copy''. No grant may be awarded unless a completed application has been received.

FOR FURTHER INFORMATION CONTACT: Cynthia Ryan (202) 205–8842 or Petraine Johnson (202) 205–8766 (for applicants located in Western States); Mahal May (202) 205–8727 or Steve Van Pelt (202) 205–8732 (for applicants located in Eastern States); and Carol Manitaras (202) 205–9729 (for applicants located in Midwestern States), U.S. Department of Education, 600 Independence Avenue, SW., Room 5090, Switzer Building, Washington, D.C. 20202–6510. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this notice in an alternate format (e.g., braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov//news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register.**

Program Authority: 20 U.S.C. 7473.

Dated: December 23, 1997.

Delia Pompa,

Director, Office of Bilingual Education and Minority Languages Affairs.

Instructions For Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1885–0528, Exp. Date: 4/30/98. The time required to complete this information collection is estimated to average 80 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202–4651. If you have any comments or concerns regarding the status of your individual submission of this form, write directly to: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 600 Independence Avenue, SW., Washington, D.C. 20202–6510.

The following forms and other items must be included in the application:

1. Application for Federal Assistance (SF 424)
2. Group Application Certification (if applicable)
3. Budget Information (ED Form No. 524)
4. Itemized Budget for each year
5. Participant Data
6. Project Documentation
   Section A—Copy of Transmittal Letter to SEA requesting SEA to comment on application
   Section B—Documentation of Empowerment Zone or Enterprise Community—if applicable
7. Program Assurances
8. Non-Construction Programs (SF 424B)

9. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013)
10. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014)
11. Disclosure of Lobbying Activities (SF–LLL)
12. Table of Contents
13. Application Narrative (not to exceed 30 pages including abstract, see instructions below)
14. One original and three copies of the application for transmittal to the Department's Application Control Center.

Mandatory Page Limits for the Application Narrative

The application narrative must not exceed the equivalent of 30 pages, using the following standards: (1) These pages must be double-spaced and printed on one side only. (2) A legible font size and adequate margins should be used. (3) The narrative must be paginated. (4) The narrative portion of the application package, including abstract, charts, graphs, tables, position descriptions, illustrations, and appendices, must not exceed the 30-page limit. The narrative section should begin with an abstract that includes a short description of the population to be served by the project, project objectives, planned project activities, and priorities addressed. The page limit applies only to item 13 (not including the abstract) and not to the other items in the checklist. Applications with a narrative section that exceeds the page limit will not be considered for funding.

Application Narrative

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Provide position descriptions, not resumes.

Budget

Budget line items must support the goals and objectives of the proposed project and be directly applicable to the program design and all other project components.

Final Application Preparation

Use the above checklist to verify that all items are addressed. Prepare one original with an original signature, and include three additional copies. Do not use elaborate bindings or covers. The application package must be mailed to the Application Control Center (ACC) and postmarked by the deadline date of February 23, l998.

Submission of Application to State Educational Agency

Section 7146(a)(4) of the Act (Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994, Pub. L. 103–382) requires all applicants except schools funded by the Bureau of Indian Affairs to submit a copy of their application to their State educational agency (SEA) for review and comment (20 U.S.C. 7476(a)(4)). Section 75.156 of the Education Department General Administrative Regulations (EDGAR) requires these applicants to submit their application to the SEA on or before the deadline date for submitting their application to the Department of Education. This section of EDGAR also requires applicants to attach to their application a copy of their letter that requests the SEA to comment on the application (34 CFR 75.156).

Notice To All Applicants

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. All applicants for new awards must include information in their applications to address this new provision in order to receive funding under this program.

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What Are Examples of How an Applicant Might Satisfy the Requirements of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct ''outreach'' efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801–0004 (Exp. 8/31/98).

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

Empowerment Zones And Enterprise Communities

Empowerment Zones (Listed Alphabetically by State) *

California: Los Angeles
California: Oakland
Georgia: Atlanta
Illinois: Chicago
Kentucky: Kentucky Highlands*
Maryland: Baltimore
Massachusetts: Boston
Michigan: Detroit
Mississippi: Mid Delta*
Missouri/Kansas: Kansas City, Kansas City
New York: Harlem, Bronx
Ohio: Cleveland
Pennsylvania/New Jersey: Philadelphia, Camden
Texas: Houston
Texas: Rio Grande Valley

Enterprise Community (EC)

Alabama: Birmingham
Alabama: Chambers County*
Alabama: Greene, Sumter Counties*
Arizona: Phoenix
Arizona: Arizona Border*
Arkansas: East Central*
Arkansas: Mississippi County*
California: L.A., Huntington Park
California: San Diego
California: San Francisco, Bayview, Hunter's Point
California: Watsonville*
Colorado: Denver
Connecticut: Bridgeport
Connecticut: New Haven
Delaware: Wilmington
District of Columbia: Washington
Florida: Jackson County*
Florida: Tampa
Florida: Miami, Dade County
Georgia: Albany
Georgia: Central Savannah*
Georgia: Crisp, Dooley Counties*
Illinois: East St. Louis
Illinois: Springfield
Indiana: Indianapolis
Iowa: Des Moines
Kentucky: Louisville
Louisiana: Northeast Delta*
Louisiana: Macon Ridge*
Louisiana: New Orleans
Louisiana: Ouachita Parish
Massachusetts: Lowell
Massachusetts: Springfield
Michigan: Five Cap*
Michigan: Flint
Michigan: Muskegon
Minnesota: Minneapolis
Minnesota: St. Paul
Mississippi: Jackson
Mississippi: North Delta*
Missouri: East Prairie*
Missouri: St. Louis
Nebraska: Omaha
Nevada: Clarke County, Las Vegas
New Hampshire: Manchester
New Jersey: Newark
New Mexico: Albuquerque
New Mexico: Moro, Rio Arriba, Taos Counties*
New York: Albany, Schenectady, Troy
New York: Buffalo
New York: Newburgh, Kingston
New York: Rochester
North Carolina: Charlotte
North Carolina: Halifax, Edgecombe, Wilson Counties*
North Carolina: Robeson County*
Ohio: Akron
Ohio: Columbus
Ohio: Grater Portsmouth *
Oklahoma: Choctaw, McCurtain Counties*
Oklahoma: Oklahoma City
Oregon: Josephine*
Oregon: Portland
Pennsylvania: Harrisburg
Pennsylvania: Lock Haven*
Pennsylvania: Pittsburgh
Rhode Island: Providence
South Dakota: Deadle, Spink Counties*
South Carolina: Charleston
South Carolina: Williamsburg County*
Tennessee: Fayette, Haywood Counties*
Tennessee: Memphis
Tennessee: Nashville
Tennessee/Kentucky: Scott, McCreary Counties*
Texas: Dallas
Texas: El Paso
Texas: San Antonio
Texas: Waco
Utah: Ogden
Vermont: Burlington
Virginia: Accomack*
Virginia: Norfolk
Virginia: Lower Yakima*
Washington: Seattle
Washington: Tacoma
West Virginia: West Central*
West Virginia: Huntington
West Virginia: McDowell*
Wisconsin: Milwaukee

* Denotes rural designee.

Questions and Answers

Does the Teachers and Personnel Grants Program have specific evaluation requirements?

Yes, the evaluation requirements are described in Section 7149 of Title VII of ESEA, 20 U.S.C. 7479.

What priorities exist for the Teachers and Personnel Grants?

Fiscal Year 1998, the Department has announced an invitational priority for applicants proposing to improve teacher preparation programs in institutions of higher education to better prepare all teachers to meet the needs of LEP students. In addition, the department has announced an invitational priority for applicants which propose to provide special support for new bilingual teachers during their initial teaching years. The competitive priorities for this program are (1) for institutions of higher education, in consortia with local or State educational agencies, that offer degree programs that prepare new bilingual education teachers in order to increase the availability of educators to provide high-quality education to limited English proficient students, and, (2) for programs that will contribute to systemic educational reform in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community, and are made an integral part of the Zone's or Community's comprehensive revitalization strategies.

Applicants proposing to address invitational or competitive priorities may include in their abstracts a brief description of their plans to address the priorities.

What requirements must grantees meet related to teacher certification?

The Title VII statute requires grantees to assist educational personnel in meeting State and local certification requirements. 20 U.S.C. 7477. However, because certification requirements vary among States, applicants are given flexibility in designing activities that lead to meeting State and local certification requirements.

What activities are authorized under Teachers and Personnel Grants?

Authorized activities are those which support the purpose of the program: providing preservice and inservice professional development for teachers and other educational personnel. Such activities may include, but are not limited to, the development of program curricula; collaboration with local school districts in designing new teacher training activities; reforming

and improving teacher training programs to reflect high standards of professionalism. Institutions of higher education, applying in consortia arrangements with one or more local educational agencies or State educational agencies are eligible to submit applications proposing preservice and inservice programs. This means the institution of higher education would be the lead agency and the fiscal agent for the grant. State and local educational agencies may submit applications and act as fiscal agents and lead agencies for projects that propose to carry out inservice—but not preservice—professional development.

May program budgets include costs for items other than student tuition and fees?

Project budgets should reflect the proposed program activities. In addition to student support costs, budget items may include costs for personnel, supplies or equipment, and other reasonable and necessary costs to support developmental activities.

What information may be helpful in preparing the application narrative for a Teachers and Personnel Grant?

In responding to the selection criteria applicants may wish to consider the following questions as a guide for preparing application narrative.

- What are the specific responsibilities of districts, schools, institutions of higher education and other partnership organizations in planning, implementing and evaluating the proposed program? How is the program linked to the school district's or school's overall professional development plan? What resources and support will each of the consortia members provide? How will resources be integrated to ensure maximum effectiveness of the program and to promote capacity building and long-range collaboration?
- How does the training curricula reflect high standards for pedagogy, content, and proficiency in English and a second language to ensure that participants are effectively prepared to provide instruction and support to LEP students?
- How will the program assist in systemically reforming policies and practices in the target schools and in the IHE related to the preparation of new teachers, the induction of new bilingual teachers, clinical experiences for new bilingual teachers and other educational personnel, and professional development opportunities for all teachers?
- What special selection criteria will the applicant adopt to ensure that individuals selected to participate in the program hold promise for successfully completing program requirements? What special support will be provided to new bilingual teachers by experienced bilingual teachers, higher education faculty, and school administrators to guide them during their period of induction or their period of training?
- How will the instructional responsibilities of new teachers be balanced with appropriate professional development, support and planning time?
- How will clinical experiences for preservice participants be structured to ensure that they are well-supervised, of sufficient duration and in a setting which provides opportunities for participants to experience a variety of effective bilingual education instructional methods and approaches?
- How is the training curriculum based on current research related to effective teaching and learning? What evidence of effectiveness supports the training model?
- What performance indicators will the proposed program use to support the effectiveness of the program related to, for example: Improved teaching practices; participants' effectiveness in the instructional setting; improved performance on National or State benchmark tests; reduction in the number of new bilingual teachers leaving the profession; improvement of graduation rates?
- How will the program evaluation incorporate strategies for assessing the progress and performance of participants; communicating meaningful, regular and timely feedback to participants; improving the quality of the training program; documenting and identifying exemplary program features and successful strategies; and reporting on specific data related to the number of participants completing the program and the number of graduates placed in the instructional setting?
- How will the proposed program improve course curricula and the skills and knowledge of higher education faculty to better prepare ALL teachers in content and pedagogy related to the needs of LEP students?

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 84.195A

TITLE: BILINGUAL EDUCATION: TEACHERS AND PERSONNEL GRANTS

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 CFR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

Authorized Representative					Name of Institution/ Organization
Typed Name	Title	Signature	Date Signed	Telephone Number (Including Area Code)	

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

PARTICIPANT DATA

Note: This form must be completed by applicants under the following programs:

- **Teachers' and Personnel Grants**
- **Career Ladder Program**

- **Number of proposed participants in each of the following categories**

Preservice Teachers	_____
Inservice Teachers	_____
Other Educational Personnel (Specify type of personnel below)	_____
_____	_____
_____	_____

- **Degree level(s) to be attained (if applicable)** _____

_____

- **Certification Type(s) to be attained** _____

_____

- **Language(s) of Participants (other than English)** _____

PROJECT DOCUMENTATION

Note: Submit the appropriate documents and information as specified below for the following programs.

- Teachers and Personnel Grants
- Career Ladder Program

Section A

A copy of the applicant's transmittal letter requesting the appropriate State educational agency to comment on the application.

Section B

If applicable, identify on the line below the Empowerment Zone, Supplemental Empowerment Zone, or Enterprise Community that the proposed project will serve.
(See the competitive priority and the list of designated Empowerment Zones in previous sections of this application package.)

_____

PROGRAM ASSURANCES

NOTE: The authorizing statute requires applicants under certain programs to provide assurances. These assurances are specified below under the relevant programs. If your application pertains to any of these programs, this form must be completed.

As the duly authorized representative of the applicant, I certify that the applicant, in regard to the program relevant to this application:

- Teachers and Personnel Grants
- Career Ladder Program

Will include, if applicable, as part of the project implementing a master's or doctoral-level program, a training practicum in a local school program serving children and youth of limited English proficiency.
(Authority: 20 U.S.C. 7426(g)(3)

_____
Authorized Representative

Name: _____

Signature: _____

Typed Name: _____

Date: _____

Applicant Organization: _____

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE

APPLICANT ORGANIZATION	DATE SUBMITTED

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 —

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. **Type of Federal Action:** ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. **Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	3. **Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter ____ date of last report ____
4. **Name and Address of Reporting Entity:** ☐ Prime ☐ Subawardee Tier _____, *if known:* **Congressional District,** *if known:*	5. **If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime:** **Congressional District,** *if known:*	
6. **Federal Department/Agency:**	7. **Federal Program Name/Description:** CFDA Number, *if applicable*: _____	
8. **Federal Action Number,** *if known:*	9. **Award Amount,** *if known:* $	
10. a. **Name and Address of Lobbying ~~Entity~~ Registrant** *(if individual, last name, first name, MI):*	b. **Individuals Performing Services** *(including address if different from No. 10a) (last name, first name, MI):*	
~~11. Amount of Payment *(check all that apply):*~~ ~~$ _____ ☐ actual ☐ planned~~	~~13. Type of Payment *(Check all that apply):*~~ ~~☐ a. retainer~~ ~~☐ b. one-time fee~~ ~~☐ c. commission~~ ~~☐ d. contingent fee~~ ~~○ e. deferred~~ ~~☐ f. other; specify: _____~~	
~~12. Form of Payment *(check all that apply):*~~ ~~☐ a. cash~~ ~~☐ b. in-kind; specify: nature _____ value _____~~		
~~14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:~~ ~~*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*~~		
~~15. Continuation Sheet(s) SF-LLL attached: ☐ Yes ☐ No~~		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____	
Federal Use Only	**Authorized for Local Reproduction** **Standard Form - LLL**	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A, Continuation Sheet for additional information if the space on the form is inadequate.~~ Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the ~~lobbying entity~~ registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

~~11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this a material change report, enter the cumulative amount of payment made or planned to be made.~~

~~12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.~~

~~13. Check the appropriate box(es). Check all boxes that apply. If other specify nature.~~

~~14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~

~~15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

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federal register

Tuesday
December 30, 1997

Part X

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91, 121, and 142

Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, and 142

[Docket No. 25910; Amendment Nos. 91–255, 121–267, and 142–2]

RIN 2120–AE71

Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; disposition of comments and conforming amendments.

SUMMARY: This document disposes of comments on an age limitation provision in a final rule published on April 4, 1997. That final rule amended the certification, training, and experience requirements for pilots, flight instructors, and ground instructors, and the certification requirements for pilot schools approved by the FAA. This document also revises certain references in the Federal Aviation Regulations to conform to the references in that final rule. These revisions will not impose any additional restrictions on persons affected by the regulations.

EFFECTIVE DATE: This rule is effective January 29, 1998.

FOR FURTHER INFORMATION CONTACT: John Lynch, Certification Branch, AFS–840, General Aviation and Commercial Division, Flight Standards Service, FAA, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–3844.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the FAA, Office of Rulemaking, Attn.: ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the amendment number or docket number of this final rule.

Using a modem and suitable communications software, an electronic copy of this document may be downloaded from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register's** electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov or the **Federal Register's** web page at http://www.access.gpo.gov/su__docs for access to recently published rulemaking documents.

Background

On April 4, 1997, the FAA published a final rule titled ''Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules'' (62 FR 16220). That final rule, which became effective on August 4, 1997, amended the certification, training, and experience requirements for pilots, flight instructors, and ground instructors, and the certification requirements for pilot schools approved by the FAA. The FAA published corrections to that final rule on July 30, 1997 (62 FR 40888).

This document addresses comments on an age limitation provision in the final rule and revises certain references to Title 14, Code of Federal Regulations (14 CFR) part 61 contained in 14 CFR parts 91, 121, and 142 to conform to the provisions of the final rule. These revisions will not impose any additional restrictions on persons affected by the regulations.

Discussion of Comments

In Notice of Proposed Rulemaking No. 95–11, ''Pilots, Flight Instructors, Ground Instructors, and Pilot Instructors, and Pilot Certification Rules'' (60 FR 41160, August 11, 1995), the FAA included a proposal to amend part 61 by extending the ''Age 60 Rule'' (§ 121.383(c)) to holders of U.S. pilot certificates and special purpose pilot authorizations employed by foreign air carriers that operate U.S.-registered civil aircraft in certain scheduled international air services and nonscheduled international air transport operations. The proposal aligned the age limitations in §§ 61.3 and 61.77 with the ''Age 60 Rule'' applicable to pilots servicing U.S. air carriers operating under part 121. The proposal, however, was limited to the operation of aircraft operated under part 121 at that time. Thus, it only addressed U.S.-registered civil aircraft having (1) a passenger seating configuration of more than 30 seats, excluding any required crewmember seat, or (2) a payload capacity of more than 7,500 pounds. Before adoption of the final rule, the applicability of part 121 was amended to include certain ''commuter'' airplanes. To further align the age limitations in part 61 with the provisions of part 121, the FAA amended §§ 61.3 and 61.77 in the final rule to include those commuter aircraft. The final rule also extended the date for pilots to comply with the age limitations in §§ 61.3 and 61.77. Because Notice No. 95–11 did not include these provisions, the FAA invited public comment on the amendment.

Comments: The FAA received eight comments on the ''Age 60 Rule.'' The Air Line Pilots Association (ALPA) supports the provisions in §§ 61.3 and 61.77 as a means of providing the same level of safety to passengers on all U.S.-registered aircraft. The remaining seven commenters oppose the provisions. These commenters, for the most part, challenge the age limitation for part 121 pilots and all pilots affected by §§ 61.3 and 61.77, rather than address the more specific issue of whether certain commuter aircraft should be included in the age limitation provisions of §§ 61.3 and 61.77.

Many of the individual commenters base their opposition to the ''Age 60 Rule'' on multiple grounds. Three commenters who oppose the ''Age 60 Rule'' believe that the medical certification process for pilots adequately identifies disqualifying physical and mental conditions. One of those commenters states that commuter aircraft pilots should be able to fly as long as they pass the required physical examination because the economic burden on these pilots is greater than the burden on air carrier pilots. Another of those commenters contends that the rule results in age discrimination. Four commenters who oppose the inclusion of the ''Age 60 Rule'' in § 61.77 cite the experience level of pilots over the age of 60 in support of their position.

One commenter states that a ''medical panel'' found that there was no justification for the ''Age 60 Rule.'' That commenter also states that a pilot shortage has caused other countries to relax their ''Age 60 Rule.'' Another commenter contends that there is no relevant data to support the age limit. That commenter also states that without evidence of a need for the ''Age 60 Rule'' the economic hardship imposed by the rule on the aviation industry and individual citizens cannot be justified.

FAA Response: As previously noted, these comments, for the most part, concern the general merits of the ''Age 60 Rule'' rather than the expansion of the applicability of the age limitation in §§ 61.3 and 61.77 to include certain commuter aircraft. Furthermore, the FAA has previously addressed the issues raised by the commenters. In the final rule published on April 4, 1997, the FAA addressed comments on whether the ''Age 60 Rule'' should be included in §§ 61.3 and 61.77. The FAA also addressed the application of the ''Age 60 Rule'' to pilots of certain commuter aircraft in Amendment Nos. 121–251 and 135–58 (60 FR 65832, December 20, 1995), which requires

certain commuter operations previously conducted under part 121. In addition, the FAA issued a disposition of comments and notice of agency decision on December 11, 1995 (60 FR 65977) that addressed various issues regarding the need for an age limitation including issues raised in many of the comments discussed above. Because these issues previously have been addressed, the FAA will not reconsider them at this time. In addition, because the comments do not address the specific issue raised by the most recent amendment to §§ 61.3 and 61.77 or provide any new arguments concerning the age limitation, the FAA has not further revised those sections.

Conforming Amendments

In the final rule that amended part 61, certain sections were redesignated. As a consequence, references to those sections in § 91.307, appendix H to part 121, § 142.3, § 142.47, and § 142.49 have been revised to reflect the new designations.

Good Cause Justification for Immediate Adoption

This amendment is needed to conform certain references in parts 91, 121, and 142 to the appropriate sections in part 61. Because the amendment would impose no additional burden on the public, the FAA finds that notice and opportunity for public comment before adopting this amendment are unnecessary.

Conclusion

The FAA has determined that this regulation imposes no additional burden on any person. Accordingly, it has been determined that the action (1) is not significant under Executive Order 12866 and (2) is not a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Also, because this amendment will not impose any additional burdens on the parties subject to the regulations, a full regulatory evaluation is not required. In addition, the FAA certifies that the rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects

14 CFR Part 91

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 142

Aircraft, Airman, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 91, 121, and 142 of title 14, Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citations for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 4013, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

§ 91.307 [Amended]

2. In § 91.307(d)(2)(ii) remove ''§ 61.169'' and add ''§ 61.67'' in its place.

PART 121—OPERATING REQUIREMENTS; DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

3. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

4. Appendix H to part 121 is amended by revising paragraphs 1 and 4 of the section titled Level C, Training and Checking Permitted, and revising the section titled Level D, Training and Checking Permitted, to read as follows:

Appendix H to Part 121—Advanced Simulation

* * * * *

Level C

Training and Checking Permitted

1. For all pilots, transition training between airplanes in the same group, and for a pilot in command the certification check required by § 61.153(g) of this chapter.

* * * * *

4. For all second-in command pilot applicants who meet the aeronautical experience requirements of § 61.159 of this chapter in the airplane, the initial and upgrade training and checking required by this part, and the certification check requirements of § 61.153 of this chapter.

* * * * *

Level D

Training and Checking Permitted

Except for the requirements listed in the next sentence, all pilot flight training and checking required by this part and the certification check requirements of § 61.153(g) of this chapter. The line check required by § 121.440 of this part, the static airplane requirements of appendix E to this part, and the operating experience requirements of § 121.434 of this part must still be performed in the airplane.

* * * * *

PART 142—TRAINING CENTERS

5. The authority citation for part 142 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44703, 44705, 44707, 44709–44711, 45102–45103, 45301–45302.

6. Section 142.3 is amended by revising the definition of ''flight training equipment'' to read as follows:

§ 142.3 Definitions.

* * * * *

Flight training equipment means flight simulators, as defined in § 61.1(b)(5) of this chapter, flight training devices, as defined in § 61.1 (b)(7) of this chapter, and aircraft.

* * * * *

7. Section 142.47 is amended by revising paragraphs (a)(3) and (a)(5) (i) and (ii) to read as follows:

§ 142.47 Training center instructor eligibility requirements.

(a) * * *

(3) If instructing in an aircraft in flight, is qualified in accordance with subpart H of part 61 of this chapter;

* * * * *

(5) * * *

(i) Except as allowed by paragraph (a)(5)(ii) of this section, meets the aeronautical experience requirements of § 61.129 (a), (b), (c), or (e) of this chapter, as applicable, excluding the required hours of instruction in preparation for the commercial pilot practical test;

(ii) If instructing in flight simulator or flight training device that represents an airplane requiring a type rating or if instructing in a curriculum leading to the issuance of an airline transport pilot certificate or an added rating to an airline transport pilot certificate, meets the aeronautical experience requirements of § 61.159, § 61.161, or § 61.163 of this chapter, as applicable; or

* * * * *

§ 142.49 [Amended]

8. In § 142.49(c)(3)(ii) remove ''subpart G'' and add ''subpart H'' in its place.

Issued in Washington, D.C., on December 19, 1997.

Jane F. Garvey,

Administrator.

[FR Doc. 97–33754 Filed 12–29–97; 8:45 am]

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Vol. 62, No. 249

Tuesday, December 30, 1997

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FEDERAL REGISTER PAGES AND DATES, DECEMBER

63441–63626 1
63627–63824 2
63825–64130 3
64131–64262 4
64263–64510 5
64511–64676 8
64677–65004 9
65005–65196 10
65197–65308 11
65309–65592 12
65593–65740 15
65741–65990 16
65991–66250 17
66251–66494 18
66495–66812 19
66813–66972 22
66973–67256 23
67257–67548 24
67549–67692 29
67693–68138 30

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7056 64127
7057 64131
7058 65003
7059 65309
7060 65987
7061 66251

Executive Orders:
13069 65989
13070 66493

Administrative Orders:
Presidential Determinations:
No. 98–4 of November 14, 1997 63823
No. 98–5 of November 17, 1997 63619
No. 96–6 of December 2, 1997 65005
No. 96–7 of December 5, 1997 66253
No. 96–8 of December 5, 1997 66255

5 CFR

213 63627
315 63627
410 63630
531 65311
532 .....66973, 67257, 67258
551 67238

Proposed Rules:
831 67295
842 67295
870 67295
890 67295
591 63630
1201 66813

7 CFR

2 65593
17 63606
58 66257
247 64511
301 .....64133, 64263, 64677
319 65007
320 65007
330 65007
352 65007
401 .....63631, 65313
412 67693
422 65321
437 65338
443 65344
454 63631
457 .....63631, 63633, 65130, 65313, 65321, 65338, 65344, 65741, 65991, 67117
927 66495
959 67694
1209 66973
1412 63441
1944 67216
2003 67258

Proposed Rules:
51 66033
70 63471
205 65850
300 67761
301 67761
610 64174
729 63678
800 66036
810 66036
966 66312
980 66312
985 67297
1301 65226

8 CFR

213a 64048
214 67764
299 64048

9 CFR

50 66259
78 .....64134, 65596
91 64265
93 64265
94 .....65747, 65999

Proposed Rules:
85 65630
381 64767
441 64767

10 CFR

30 63634
32 63634
50 .....63825, 66977
70 63825
73 63640
1008 67518
1703 66815

Proposed Rules:
40 65039
50 .....63892, 63911, 66038
70 63911

11 CFR

Proposed Rules:
100 66832
102 67300
104 67300
108 67300
114 .....65040, 66832

12 CFR

3 68064
8 64135
202 66412
203 66259
208 68064
225 68064
226 .....63441, 66179

265....64996
325....68064
506....66260, 67117
516....64138
543....64138
544....66260, 67117
545....64138, 66260, 67117, 67696
550....67696
552....64138, 66260, 67117
556....64138
559....66260, 67117
560....66260, 67117
561....66260, 67117
563....64138, 66260, 67117
563e....67696
565....66260, 67117
567....66260, 67117
571....67696
575....66260, 67117
614....63644, 66816
703....64146
704....64148
725....67549
790....65197
791....64266
934....65197
960....66977
1806....64440

Proposed Rules:

225....64997
226....64769
404....64177
405....64177
708a....64185
708b....64187

14 CFR

39....63622, 63828, 63830, 63831, 63835, 63836, 64268, 64511, 64513, 64514, 64517, 64519, 64680, 65009, 65011, 65198, 65352, 65355, 65597, 65600, 65601, 65603, 65604, 65749, 65750, 66001, 66264, 66266, 66268, 66269, 66271, 66498, 66500, 66502, 66506, 66508, 66511, 66512, 66980, 67550, 67552, 67708
71....64148, 64150, 64151, 64152, 64268, 64268, 64269, 64271, 64272, 64273, 64521, 65012, 65013, 65014, 65015, 65201, 65357, 65358, 65606, 66179, 66818, 67265, 67266, 67267, 67555, 67711, 67712, 67713
73....65359, 65360, 66002, 67268, 67269, 67711
91....66248, 67555, 68136
93....66248
95....65016, 65361, 65363
97....63447, 63449, 63451, 67556, 67559
121....65202, 66248, 68136
135....66248
142....68136
255....63837, 66272
1260....63452

Proposed Rules:

39....63473, 63475, 63476, 63624, 63912, 63914, 64523, 64775, 64777, 64779, 64780, 64782, 64784, 64785, 64787, 65227, 65228, 65230, 65231, 65233, 65768, 66315, 66317, 66560, 66561, 66562, 66563, 66565, 66567, 67300, 67303
71....63916, 63917, 64321, 64321, 64322, 64323, 64525, 65040, 65041, 65308, 65383, 65631, 66838, 66840

15 CFR

295....64682
902....67714
922....66003, 67723

Proposed Rules:

806....65043
902....67714
960....65384

16 CFR

305....67560

17 CFR

15....65203
230....64968, 65043
239....64968
270....64968
274....64687, 64968

Proposed Rules:

1....66569
33....66569
200....67940
240....67996, 67940, 367996, 68011, 68018
249....67940

18 CFR

35....64688
37....64715
401....64154

19 CFR

4....66521

Proposed Rules:

123....67765
142....67765

20 CFR

255....64161
295....67724
340....64273
404....64274
422....64274

Proposed Rules:

10....67120
25....67120
211....64188
422....63681

21 CFR

5....67270
101....63647, 63653, 64634, 66275
179....64102, 64107
211....66522
500....66982
520....65020
522....66983
524....65752
558....66522, 66984, 66985, 66986, 67273, 67724, 67725
806....67274
866....66003

Proposed Rules:

101....67771, 67775
200....64048
201....67770
330....67770
358....67770
801....67011
803....67011
804....67011
806....67011
807....67011
808....65384, 66179
810....67011
820....67011
821....67011
876....65770
1002....67011
1020....65235, 67011
1308....64526

22 CFR

40....67563, 67564
120....67274
123....67274
124....67274
126....67274
127....67274
129....67274

Proposed Rules:

22....63478
51....63478
53....63478

23 CFR

1327....63655

Proposed Rules:

655....64324

24 CFR

100....66424
103....66424
201....65180
202....65180
203....65180
570....64634
888....64521

Proposed Rules:

81....68060
180....66488

25 CFR

Proposed Rules:

514....65775

26 CFR

1....67725, 67726
25....66987
40....67568
54....66932, 67688, 67689
602....66987

Proposed Rules:

1....64190, 66575, 67780
31....67304
40....67589
52....67013
54....66967

28 CFR

0....63453
540....65184, 65196

29 CFR

520....64956
521....64956
522....64956
523....64956
527....64956
1614....63847
1910....65203, 66275
2590....66932, 67689
Ch. XXVI....67728
Ch. XL....67728
4011....65607
4022....65607
4044....65609, 65610

Proposed Rules:

1910....65388
2550....66908
4022....66319

30 CFR

206....65753
250....67278
251....67278
901....66819

Proposed Rules:

56....65777, 67013
57....64789, 65777, 67013
62....65777, 67013
70....65777, 67013
71....65777, 67013
75....64789
913....67014
917....63684, 65044
926....63685, 64327
936....65632
938....67590
943....67592, 67596, 67598
946....67016

31 CFR

Ch. V....67729
500....64720

Proposed Rules:

356....64528

32 CFR

175....66523
199....66989, 66992
318....67291
320....65020

Proposed Rules:

199....64191, 67018
901....63485
989....67305

33 CFR

96....67492
100....65021, 66995, 67570
117....63847, 66005, 66006
151....67526
160....65203
165....65022

Proposed Rules:

62....67031
66....67031
117....66039

36 CFR

701....64279

Proposed Rules:

1....63488
14....63488
242....66216
327....64192
1190....67320
1191....67320

37 CFR

202....63657, 66822

Proposed Rules:

253....63502, 65777
255....63506, 65778

38 CFR

4....65207

17 64722
21 ....63847, 63848, 66277
36 63454
Proposed Rules:
20 64790
21 66320

39 CFR

111 63850
255 66996
262 64280
265 64280
954 66997

40 CFR

9 66278
52 ....63454, 63456, 63658, 64284, 64522, 64722, 64725, 65224, 65611, 65613, 66007, 66279, 66822, 66998, 67000, 67002, 67004, 67006
58 67009
62 ....65616, 67570
63 ....64736, 65022
64 63662
70 63662
71 63662
72 66278
73 66278
74 66278
75 66278
77 66278
78 66278
80 63853
81 ....64284, 64725, 65025
82 68028
85 67733
89 67733
180 ....63662, 63858, 64048, 64287, 64294, 65030, 65365, 65367, 65369, 66008, 66014, 66020
185 ....64048, 64284, 64287, 66020
186 ....64048, 66020
260 67736
261 63458
264 ....64636, 64795
265 64636
268 64504
270 64636
271 67572
272 67578
300 ....65225, 67736
721 64738
Proposed Rules:
51 ....64532, 66841
52 ....63687, 64329, 64543, 647389, 65046, 65634, 66040, 66042, 66043, 66046, 66576, 66843, 67034, 67035, 67320,
59 67784
60 67788
62 ....65635, 67601
63 ....65049, 66049, 67788
80 63918
81 ....63687, 66578
85 ....66841, 67818
89 67818
112 63812
144 67035
146 67035
194 64327
271 67601
272 67601
441 ....66182, 67323
721 64738
799 ....67036, 67038, 67466

41 CFR

51–2 66527
51–4 66527
51–6 66527
60–1 66970
60–999 66970
105–60 64740
301 63798

42 CFR

416 66726
417 63669
482 66726
483 67174
485 66726
489 66726
Proposed Rules:
1001 ....63689, 65049

43 CFR

418 66442
3740 65376
3810 65376
3820 65376
Proposed Rules:
4 64544
3820 67602

44 CFR

61 66026
65 ....67737, 67741
67 67742
Proposed Rules:
67 67819

45 CFR

144 67689
146 ....66932, 67689
205 64301
232 64301
233 64301
235 64301
250 64301
251 64301
255 64301
256 64301
257 64301
Ch. XI 66529
1110 66825
1643 67746
Proposed Rules:
1302 65778

46 CFR

1 67526
2 67492
8 67526
31 ....67492, 67526
69 67526
71 ....67492, 67526
91 ....67492, 67526
107 ....67492, 67526
114 64303
115 67492
116 64303
117 64303
118 64303
121 64303
122 64303
126 67492
153 67526
154 67526
175 ....64303, 65739, 67492
176 67492
177 64303
178 64303
180 64303
185 64303
189 67492
514 63463

47 CFR

20 63864
22 63864
25 64167
43 64741
52 64759
54 ....65036, 65389
63 64741
64 ....64741, 64759
69 ....65619, 66029
73 ....63674, 65392, 65764, 65765, 65766, 66030, 66031, 66294, 66295, 66530, 66826
74 65392
Proposed Rules:
1 ....65780, 66321
21 65780
32 65053
73 ....63690, 65781, 65782, 66323, 66324
74 65780

48 CFR

Ch. I 64912, 64952
1 ....64913, 64940
2 64914
4 ....64915, 64916
5 64914
6 64916
7 64914
8 ....64914, 64916
9 64914
12 ....64914, 64916
13 ....64914, 64916
16 ....64914, 64916
17 64914
19 ....64914, 64916, 64940
22 64914
25 64929
29 64930
31 ....64930, 64931, 64932
32 ....64914, 64916
33 ....64914, 64933
34 64914
37 64914
38 64914
39 64914
41 64916
42 ....64915, 64931, 64934, 64940
43 64916
45 64914
46 64914
47 64936
49 64916
51 64914
52 ....64914, 64915, 64916
53 ....64914, 64916, 64934, 64936, 64940
1201 67749
1202 67749
1203 67749
1205 67749
1206 67749
1209 67749
1214 67749
1216 67749
1217 67749
1222 67749
1224 67749
1225 67749
1236 67749
1237 67749
1246 67749
1252 67749
5231 66826
Proposed Rules:
204 65782
1843 64545
1852 64545

49 CFR

171 ....65188, 66900
172 66898
174 66898
175 66898
176 66898
177 66898
194 67292
199 67293
219 ....63464, 63675
225 63675
240 63464
595 67752
1241 65378
Proposed Rules:
172 66903
174 66903
175 66903
176 66903
177 66903
191 67602
192 ....67602, 67608
193 67602
194 67602
195 ....65635, 67608
213 65401
243 65479
376 67821
572 64546
Ch. X 64193

50 CFR

17 ....64306, 66295
20 63608
222 63467
260 67585
285 66828
600 66531
622 ....63677, 66304, 67010, 67714
648 ....63872, 64765, 66304, 67754
660 ....63876, 67610
679 ....63877, 63878, 63880, 64760, 65379, 65622, 65626, 66031, 66311, 66829, 67754, 67755

Proposed Rules:
14.....64335
17 .....64337, 64340, 64799, 64800, 65237, 65783, 65787, 66325, 66583, 67041, 67324
23.....64347
100.....66216
226.....66584
227.....66325
229.....65402
425.....66325
600 .....65055, 66844, 67608
622.....65056
648.....65055, 66844
660.....66049, 67610
679 .....63690, 65402, 65635, 65638, 65644, 67041

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 30, 1997

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Freedom of Information Act; implementation; published 12-30-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Ocean and coastal resource management:

Marine sanctuaries—

Gulf of the Farallones National Marine Sanctuary; name change from Point Reyes/Farallon Islands National Marine Sanctuary; correction; published 12-30-97

ENVIRONMENTAL PROTECTION AGENCY

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; published 12-30-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:

New drug applications—

Chlortetracycline, sulfathiazone, and penicillin; published 12-30-97

Sponsor name and address changes—

Alpharma Inc.; published 12-30-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; published 12-15-97

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Building demolition; definition of structure; published 12-30-97

Empowerment zone employment credit; qualified zone employees; published 12-30-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:

Chilling processes; retained water in poultry products; protocols for obtaining data; comments due by 1-8-98; published 12-9-97

AGRICULTURE DEPARTMENT

Natural Resources Conservation Service

Technical assistance:

State Technical Committees; membership and role rexpansion; comments due by 1-5-98; published 12-4-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Pelagic shelf rockfish; comments due by 1-5-98; published 11-5-97

Atlantic highly migratory species—

Scoping document; availability and comment request; comments due by 1-9-98; published 11-28-97

Northeastern United States fisheries—

Experimental fishing permit applications; comments due by 1-6-98; published 12-22-97

EDUCATION DEPARTMENT

Privacy Act; implementation; comments due by 1-8-98; published 11-24-97

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Perchloroethylene; dry cleaning facilities; comments due by 1-9-98; published 12-10-97

Pesticide active ingredient production; comments due by 1-9-98; published 11-10-97

Air pollution control; new motor vehicles and engines:

Inspection/maintenance program requirements; on-board diagnostic checks; comments due by 1-6-98; published 12-22-97

Air pollution; standards of performance for new stationary sources:

Test methods and performance specifications; editorial changes and technical corrections; comments due by 1-5-98; published 11-18-97

Air quality implementation plans; approval and promulgation; various States:

Arizona; comments due by 1-5-98; published 12-9-97

California; comments due by 1-5-98; published 12-5-97

Wisconsin; comments due by 1-9-98; published 12-10-97

Clean Air Act:

Compliance assurance monitoring; comments due by 1-5-98; published 12-2-97

Toxic substances:

Significant new uses—

Methylenebistrisubstituted aniline-, etc.; comments due by 1-8-98; published 12-9-97

Testing requirements—

Biphenyl, etc.; comments due by 1-9-98; published 11-28-97

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

Montana; comments due by 1-5-98; published 11-20-97

Television broadcasting:

Two-way transmissions; multipoint distribution service and instructional television fixed service licensees participation; comments due by 1-8-98; published 12-16-97

FEDERAL DEPOSIT INSURANCE CORPORATION

Practice and procedure:

Application, notice and request procedures, and authority delegations; technical amendments; comments due by 1-7-98; published 10-9-97

FEDERAL RESERVE SYSTEM

Bank holding companies and change in bank control (Regulation Y):

Real estate appraisals; comments due by 1-8-98; published 12-9-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Communicable diseases control:

Lather brushes; treatment, sterilization, handling, storage, marking, and inspection; revocation; comments due by 1-5-98; published 10-20-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare:

Home health agency physician certification regulations; comments due by 1-5-98; published 11-5-97

INTERIOR DEPARTMENT

Land Management Bureau

Range management:

Wild horse and burro adoptions; power of attorney use disallowed; comments due by 1-9-98; published 11-10-97

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Arkansas River shiner; comments due by 1-5-98; published 12-5-97

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Illinois; comments due by 1-7-98; published 12-23-97

Kentucky; comments due by 1-9-98; published 12-10-97

POSTAL SERVICE

Freedom of Information Act; implementation:; comments due by 1-5-98; published 12-5-97

SECURITIES AND EXCHANGE COMMISSION

Securities:

Equity index insurance products; structure, marketing, etc.; comments due by 1-5-98; published 11-21-97

SOCIAL SECURITY ADMINISTRATION

Social security benefits:

Disability benefits reduction on account of workers'

compensation and public disability benefits and payments; proration methods; comments due by 1-5-98; published 11-12-97

TRANSPORTATION DEPARTMENT

Coast Guard

Regattas and marine parades:

U.S. National Waterski Racing Championship; comments due by 1-9-98; published 11-25-97

Tank vessels:

Towing vessel safety; comments due by 1-5-98; published 10-6-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Aerospatiale; comments due by 1-8-98; published 12-9-97

American Champion Aircraft Corp.; comments due by 1-8-98; published 11-3-97

Boeing; comments due by 1-5-98; published 11-25-97

Dornier; comments due by 1-8-98; published 12-9-97

Fokker; comments due by 1-8-98; published 12-9-97

Grumman; comments due by 1-8-98; published 12-9-97

Lockheed; comments due by 1-5-98; published 11-25-97

SAAB; comments due by 1-8-98; published 12-9-97

Twin Commander Aircraft Corp.; comments due by 1-6-98; published 10-31-97

Class D and E airspace; comments due by 1-8-98; published 11-24-97

Class E airspace; comments due by 1-5-98; published 11-19-97

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Sales of obligations between interest payment dates; witholding on interest; comments due by 1-5-98; published 10-14-97

Source of income from sales of inventory partly from sources within possession of United States, etc.; comments due by 1-8-98; published 10-10-97

VETERANS AFFAIRS DEPARTMENT

Vocational rehabilitation and education:

Veterans education—

Service Members Occupational Conversion and Training Act; certification deadlines; comments due by 1-9-98; published 11-10-97

LIST OF PUBLIC LAWS

The List of Public Laws for the 105th Congress, First Session, has been completed. It will resume when bills are enacted into Public Law during the second session of the 105th Congress, which convenes on January 27, 1998.

Note: A Cumulative List of Public Laws will be published in the **Federal Register** on December 31, 1997.

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