10–22–99
Vol. 64 No. 204
Pages 56945–57360

federal register

Friday
October 22, 1999

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register,** Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**512–1806**
General online information	**202–512–1530; 1–888–293–6498**
Single copies/back copies:	
Paper or fiche	**512–1800**
Assistance with public single copies	**512–1803**
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	**523–5243**
Assistance with Federal agency subscriptions	**523–5243**

Printed on recycled paper.

Contents

Federal Register

Vol. 64, No. 204

Friday, October 22, 1999

Agency for Toxic Substances and Disease Registry
NOTICES
Meetings:
Scientific Counselors Board, 57100

Agricultural Marketing Service
RULES
Eggs and egg products:
Shell eggs; refrigeration requirements, 56945–56947

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Forest Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 57030

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, domestic:
Asian longhorned beetle, 56948–56949

Army Department
See Engineers Corps
NOTICES
Military traffic management:
Freight traffic and guaranteed traffic rules; computation of freight charges, 57075
Patent licenses; non-exclusive, exclusive, or partially exclusive:
TNT extraction from high explosives, 57075–57076
Vertical cavity surface emitting laser, 57076

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Meetings:
ICD-9-CM Coordination and Maintenance Committee, 57100–57101

Coast Guard
RULES
Boating safety:
Vessel identification system—
State vessel titling systems; guidelines, 56965–56966
NOTICES
Agency information collection activities:
Proposed collection; comment request, 57181–57182

Commerce Department
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 57030–57032

Comptroller of the Currency
RULES
Foreign banks, U.S. branches and agencies; extended examination cycle, 56949–56953

Customs Service
NOTICES
IRS interest rates used in calculating interest on overdue accounts and refunds, 57184–57185
Practice and procedure:
Customs Electronic Bulletin Board; Internet access, 57185

Defense Department
See Army Department
See Engineers Corps
See Navy Department
NOTICES
Meetings:
Defense Partnership Council, 57070
Early Intervention and Education for Infants, Toddlers, Preschool Children, and Children with Disabilities Domestic Advisory Panel, 57070–57071
Privacy Act:
Systems of records, 57071–57075

Education Department
RULES
Postsecondary education:
Student assistance general provisions, 57355–57359
PROPOSED RULES
Postsecondary education:
Preparing Tomorrow's Teachers to Use Technology Program, 57287–57291
NOTICES
Grants and cooperative agreements; availability, etc.:
Special education and rehabilitative services—
American Indians with disabilities; vocational rehabilitation service projects, 57081–57082
Rehabilitation Short-Term Training Program, 57351–57353

Employment and Training Administration
NOTICES
Meetings:
Native American Employment and Training Council, 57125

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 57125–57127

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Natural gas exportation and importation:
Star Natural Gas Co. et al., 57082–57083

Engineers Corps
NOTICES
Environmental statements; notice of intent:
Guadalupe River Project, CA; flood and environmental protection and recreation features, 57080–57081
Terrebonne and Lafourche Parishes, LA; hurricane and wetland protection, 57076–57080

Environmental Protection Agency
RULES
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 56966–56973
PROPOSED RULES
Air pollution control; new motor vehicles and engines:
Heavy-duty highway engines and vehicles (2004 and later model years); emissions control, and light-duty truck definition
Hearing, 56985–56986
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 56992–56998
Toxic substances:
Inventory update rule; amendments, 56998–56999
Water pollution control:
Underground injection control program—
Alabama, 56986–56991
NOTICES
Grants and cooperative agreements; availability, etc.:
Environmental management systems; local governments wishing to design and implement voluntary systems; assistance, 57092–57094

Federal Aviation Administration
RULES
Airworthiness directives:
Airbus, 56963–56965
Bombardier, 56959–56960
British Aerospace, 56957–56959
Construcciones Aeronauticas, S.A., 56962–56963
Short Brothers, 56960–56962
NOTICES
Meetings:
Aviation Rulemaking Advisory Committee, 57182

Federal Communications Commission
RULES
Radio and television broadcasting:
Media applications, rules, and processes streamlining; mass media facilities, minority and female ownership policies and rules; biennial regulatory review, 56974–56978
PROPOSED RULES
Radio and television broadcasting:
Class A low power television service; establishment, 56999–57010

Federal Deposit Insurance Corporation
RULES
Foreign banks, U.S. branches and agencies; extended examination cycle, 56949–56953
NOTICES
Reports and guidance documents; availability, etc.:
Banks and savings associations; external auditing programs; interagency policy statement, 57094–57100

Federal Energy Regulatory Commission
PROPOSED RULES
Natural Gas Policy Act:
Natural gas curtailment; termination order, 56982
NOTICES
Electric rate and corporate regulation filings:
UtiliCorp United Inc. and Allegheny Energy, Inc., et al., 57085–57088
Western Systems Power Pool et al., 57088–57089
Hydroelectric applications, 57089–57092
Applications, hearings, determinations, etc.:
Boston Edison Co., 57083
Chippewa-Flambeau Improvement Co., 57083
CNG Transmission Corp., 57083–57084
Connecticut Light & Power Co., 57084
Mississippi River Transmission Corp., 57084
Natural Gas Pipeline Co. of America, 57084
Southern Company Services, Inc., 57084
Southern Natural Gas Co. et al., 57085
United Power, Inc., 57085

Federal Reserve System
RULES
Foreign banks, U.S. branches and agencies; extended examination cycle, 56949–56953
NOTICES
Meetings; Sunshine Act, 57100

Federal Trade Commission
PROPOSED RULES
Trade regulation rules:
Franchising; disclosure requirements and prohibitions, 57293–57350

Fish and Wildlife Service
NOTICES
Endangered and threatened species:
Listing priority (2000 FY); guidance, 57114–57119

Forest Service
NOTICES
Environmental statements; availability, etc.:
Off-highway vehicle use, 57120–57121
Meetings:
Oregon Coast Provincial Advisory Committee, 57030

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Health Care Financing Administration

Health Care Financing Administration
NOTICES
Medicare:
Home health agencies—
Costs for cost reporting periods beginning on or after October 1, 1999, schedules of per-visit and per-beneficiary limitations; correction, 57101–57103
Inpatient hospital deductible and hospital and extended care services coinsurance amounts (2000 CY), 57103–57104
Monthly actuarial rates and supplementary medical insurance (Part B) premium rates (2000 CY), 57105–57110
Part A hospital insurance premium for uninsured aged and disabled individuals who have exhausted other entitlements (2000 CY), 57110–57112

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 57112–57114

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Antidumping:
Corrosion-resistant carbon steel flat products from—
Japan, 57032–57034
Tapered roller bearings from—
China, 57034–57038
Countervailing duties:
Carbon steel products from—
Sweden, 57038–57040
Live cattle from—
Canada, 57040–57069

International Trade Commission
NOTICES
Meetings; Sunshine Act, 57123–57124

Justice Department
See Prisons Bureau
NOTICES
Attorney General certifications:
Tensas Parish, LA, 57124

Labor Department
See Employment and Training Administration
See Employment Standards Administration
See Occupational Safety and Health Administration
See Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 57124–57125

Land Management Bureau
NOTICES
Alaska Native claims selection:
Sitnasuak Native Corp., 57119–57120
Environmental statements; availability, etc.:
Off-highway vehicle use, 57120–57121
Environmental statements; notice of intent:
Resource Development Group Uintah Basin Natural Gas Project, UT, 57122
Meetings:
Resource Advisory Councils—
Utah, 57122
Resource management plans, etc.:
Bishop Resource Area, Marble Creek Allotment, CA, 57122–57123
Bodie State Park, CA, 57123

National Credit Union Administration
RULES
Credit unions:
Organization and operations—
Statutory liens; impressment and enforcement, 56953–56957

National Institute of Standards and Technology
NOTICES
Meetings:
Polymeric materials and systems interface/interphase characterization and modeling; cooperative research and development consortium; opportunity to join, 57069

National Oceanic and Atmospheric Administration
PROPOSED RULES
Marine mammals:
Incidental taking—
BP Exploration (Alaska); Beaufort Sea; offshore oil and gas platforms construction and operation, 57010–57026
U.S. Navy; operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar, 57026–57029
NOTICES
Permits:
Endangered and threatened species, 57069–57070

Navy Department
NOTICES
Meetings:
Naval Research Advisory Committee, 57081

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Consumers Energy Co., 57156–57158
Export and import license applications for nuclear facilities or materials:
Energy Department, Savannah River, 57158–57159
Applications, hearings, determinations, etc.:
Commonwealth Edison Co., 57155–57156

Occupational Safety and Health Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 57127–57128
Reporting and recordkeeping requirements, 57128
Meetings:
Maritime Advisory Committee for Occupational Safety and Health, 57128–57129

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Allfirst Bank et al., 57129–57154
Meetings:
Employee Welfare and Pension Benefit Plans Advisory Council, 57154–57155

Prisons Bureau
NOTICES
Environmental statements; availability, etc.:
Yazoo County, MS; Federal correctional complex, 57124

Public Health Service
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention

Research and Special Programs Administration
RULES
Pipeline safety:
Natural gas transportation, etc.—
Gas pipelines; corrosion extent determination, 56978–56981

NOTICES
Agency information collection activities:
Proposed collection; comment request, 57182–57184

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
Exemption applications—
Equity Managers Trust et al., 57161–57162
Federated Investors, Inc., et al., 57162–57166
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 57167–57168
Depository Trust Co., 57168
Depository Trust Corp., 57168–57169
Emerging Markets Clearing Corp., 57169–57170
MBS Clearing Corp., 57170–57171
National Securities Clearing Corp., 57171–57172
New York Stock Exchange, Inc., 57172–57180
Philadelphia Stock Exchange, Inc., 57180–57181
Applications, hearings, determinations, etc.:
Forest Laboratories, Inc., 57159
Gildan Activewear Inc./Les Vetements de Sports Gildan Inc., 57159
Public utility holding company filings, 57160
Starwood Hotels & Resorts Worldwide, Inc., 57160–57161

Small Business Administration
PROPOSED RULES
Small business size standards:
North American Industry Classification System, 57187–57286

State Department
NOTICES
Meetings:
North Pacific Anadromous Fish Commission, U.S. Section Advisory Panel, 57181

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Kansas, 56982–56983
Oklahoma, 56983–56985

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Research and Special Programs Administration

Treasury Department
See Comptroller of the Currency
See Customs Service

Separate Parts In This Issue

Part II
Small Business Administration, 57187–57286

Part III
Department of Education, 57287–57291

Part IV
Federal Trade Commission, 57293–57350

Part V
Department of Education, 57351–57353

Part VI
Department of Education, 57355–57359

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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
56.....56945
301.....56948

12 CFR
4.....56949
211.....56949
347.....56949
701.....56953

13 CFR
Proposed Rules:
121.....57188

14 CFR
39 (5 documents) 56957, 56959, 56960, 56962, 56963

16 CFR
Proposed Rules:
436.....57294

18 CFR
Proposed Rules:
281.....56982

30 CFR
Proposed Rules:
916.....56982
936.....56983

33 CFR
187.....56965

34 CFR
668.....57356
Proposed Rules:
614.....57288

40 CFR
300.....56966
Proposed Rules:
85.....56985
86.....56985
147.....56986
300.....56992
710.....56998

47 CFR
73.....56974
Proposed Rules:
73.....56999

49 CFR
192.....56978

50 CFR
Proposed Rules:
216 (2 documents) 57010, 57026

Rules and Regulations

Federal Register
Vol. 64, No. 204
Friday, October 22, 1999

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 56

[Docket No. PY–99–002]

Refrigeration Requirements for Shell Eggs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: The Agricultural Marketing Service (AMS) is revising its regulations governing the voluntary shell egg grading program by adding a definition of the term ''ambient temperature,'' by amending the refrigeration requirements, and by adding a labeling requirement. Amendments to the Egg Products Inspection Act (EPIA) in 1991 involved refrigeration and labeling requirements to enhance the safety of table eggs nationwide and to protect the health and welfare of the consuming public. AMS is amending 7 CFR part 56 to conform to the FSIS temperature and labeling requirements.

DATES: *Effective Date:* October 25, 1999.

Comment Date: Comments are due on or before December 21, 1999.

ADDRESSES: Send written comments to Douglas C. Bailey, Chief, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0259, 1400 Independence Avenue, SW, Washington, DC 20250–0259. Comments may be faxed to 202/690–0941.

State that your comments refer to Docket No. PY–99–002 and note the date and page number of this issue of the **Federal Register.**

Comments may be inspected at the above location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Rex A. Barnes, Chief, Grading Branch, 202/720–3271.

SUPPLEMENTARY INFORMATION:

Background

AMS administers a voluntary grading program for shell eggs under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), with implementing regulations in 7 CFR part 56. Any interested person, commercial firm, or government agency that applies for service must comply with the terms and conditions of the regulations and must pay for the services rendered. AMS graders monitor processing operations and verify the quality, quantity, and condition of eggs packed into packages bearing official USDA identification. AMS also has facility and operating requirements for the official plants in which these services are performed. Currently, about one-third of the nation's table eggs are marketed under the voluntary grading program.

The EPIA (21 U.S.C. 1031 *et seq.*) provides for the mandatory inspection of egg products operations and the mandatory surveillance of the disposition of shell eggs that are undesirable for human consumption. From its enactment in 1970, AMS administered the EPIA and the regulations implementing it in 7 CFR part 59.

Congress amended the EPIA as part of the Food, Agriculture, Conservation and Trade Act Amendments of 1991 (Pub.L. 102–237)(hereafter referred to as ''the 1991 EPIA amendments''). The 1991 EPIA amendments require that egg handlers store and transport shell eggs destined for the ultimate consumer under refrigeration at an ambient temperature of no greater than 45 °F (7.2 °C) (21 U.S.C. 1034(e)(1)(A), see also 21 U.S.C. 1037(c)). These refrigeration requirements apply to shell eggs after they have been packed into a container destined for the ultimate consumer. Egg handlers are also required to label shell egg containers to indicate that refrigeration is required (21 U.S.C. 1034(e)(1)(B)).

The AMS proposed changes to 7 CFR parts 56 and 59 (57 FR 48569, October 27, 1992). Changes to part 59 would implement the mandatory 1991 EPIA amendments. Changes to part 56 would make conforming changes to the voluntary shell egg grading regulations.

Before AMS published the final rule, however, the Department consolidated food safety responsibilities under FSIS following enactment of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub.L. 103–354; 7 U.S.C. 2204e). Responsibility for egg products inspection functions under the EPIA was delegated to FSIS, while shell egg surveillance and grading functions continued to be administered by AMS.

FSIS promulgated a final rule with request for comments to implement the 1991 EPIA amendments in 7 CFR part 59 (63 FR 45663, August 27, 1998; effective August 27, 1999). AMS duplicated those portions of 7 CFR part 59 pertinent to shell egg surveillance and redesignated them as a new 7 CFR part 57 (63 FR 69968, December 17, 1998; effective December 18, 1998). FSIS redesignated and transferred the remaining portions of 7 CFR part 59 to 9 CFR part 590 (63 FR 72351, December 31, 1998; effective December 31, 1998).

The new FSIS temperature and labeling requirements in 9 CFR part 590 became effective August 27, 1999. The proposed changes to 7 CFR part 56 (shell egg grading) were not finalized when FSIS published its final rule amending 7 CFR part 59. Therefore, since the proposed rule was published some years ago, AMS is publishing this rule as an interim final rule with request for comment, and is only making changes deemed necessary to avoid a conflict between the requirements of the final rule published by FSIS and the AMS shell egg grading program.

Comments

One hundred and fifty-nine comments were submitted in response to the proposed rule amending 7 CFR parts 56 and 59 (57 FR 48569, October 27, 1992). Thirty-one commenters, including private citizens, State departments of agriculture, several trade associations, and several members of the egg industry, supported the proposal. The remaining commenters opposed the proposed rule or suggested alternatives to it.

There were no comments related to the grading of eggs or the official identification of graded eggs. Rather, most of the opposing comments covered three primary issues: Labeling, exemption of small producers, and cost to comply with the regulations. A full discussion and analysis of these

comments is found in FSIS' final rule (63 FR 45663, August 27, 1998) amending 7 CFR part 59 (now 9 CFR part 590).

Summary of Revisions

AMS is revising the regulations in 7 CFR part 56 to conform to the FSIS temperature and labeling requirements, and is making several minor technical and editorial changes.

A new term is added to § 56.1 to define ''ambient temperature.'' This term means the air temperature maintained in an egg storage facility or transport vehicle. This term is revised from that proposed to conform to regulations promulgated by FSIS to implement the EPIA amendments.

A new labeling requirement is added to the authority to use official identification in § 56.35. It requires that consumer packages bearing official U.S. Grade AA, A, or B identification be labeled with the words ''Keep Refrigerated'' or words of similar meaning. This requirement is added to provide graders the authority to ensure that officially graded eggs are packed into containers that are properly labeled. AMS' description of containers holding shell eggs that must bear the refrigeration label (those bearing official grade marks) is consistent with the type of containers covered by FSIS regulation. The FSIS regulation pertains to containers destined for the ultimate consumer.

The temperature requirements specified in § 56.76 (c)(1) and (f)(1) are changed to conform to the FSIS requirements.

The revision to § 56.76 (c)(1) specifically requires cooler rooms to be refrigerated and capable of maintaining an ambient temperature no greater than 45 °F (7.2 °C). Currently, this section requires cooler rooms to be capable of reducing within 24 hours and holding the maximum volume of eggs handled to 60 °F (15.6 °C) or lower. Text regarding the provision of thermometers is also revised to clarify that the thermometers would be used to monitor cooler room temperatures.

The revision to § 56.76 (f)(1) specifically requires that shell eggs to be officially identified as U.S. Grade AA, A, or B shall be refrigerated at an ambient temperature no greater than 45 °F (7.2 °C) promptly after packaging. These eggs, when shipped between official plants, are also to be transported at an ambient temperature no greater than 45 °F (7.2 °C). This, again, is to be consistent with the FSIS regulation in that shell eggs subject to the new FSIS temperature requirement are also subject to the revised temperature requirement under the grading program. Currently, this section requires that eggs held in the official plant be placed under refrigeration of 60 °F (15.6 °C) or lower promptly after packaging. It also requires officially identified eggs with an internal temperature of 70 °F (21.1 °C) or higher to be transported at a temperature of 60 °F (15.6 °C) or less when shipped from an official plant.

AMS is responsible for the voluntary grading of shell eggs for quality and the official identification of eggs as U.S. Consumer Grades AA, A, or B. The grades are defined in the official U.S. Standards, Grades, and Weight Classes for Shell Eggs (AMS–56) that are maintained by AMS. Once eggs have been officially graded, and are packed into containers that are officially identified and destined for the ultimate consumer, they are subject to FSIS' refrigeration requirements. Occasions can arise, however, where eggs have been officially graded, but are not yet packed into containers for the ultimate consumer. For example, during wholesale trading one official plant could grade eggs and pack them into cases using open trays called flats for shipping to a second official plant. In AMS' view, these eggs should also be subject to refrigeration. Therefore, all eggs that are officially identified as U.S. Consumer Grade AA, A, or B, regardless of the container type in which they are placed, are covered by this rule.

Finally, the heading for § 56.76 (f) and the text of paragraph (f)(1) are revised for clarity.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the AMS has considered the economic impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Small Business Administration defines small entities that produce and process chicken eggs as those whose annual receipts are less than $9,000,000 (13 CFR 121.201). Approximately 550,000 egg laying hens are needed to produce enough eggs to gross $9,000,000. Thus, entities with less than 550,000 laying hens would meet the small business definition.

The Agricultural Marketing Act of 1946, as amended, authorizes a voluntary grading program for shell eggs, with implementing regulations in 7 CFR part 56. Shell egg processors that apply for service must pay for the services rendered. These user fees are proportional to the volume of shell eggs graded, so that costs are shared by all users. Shell egg processors who meet the facility and operating requirements are entitled to pack their eggs in packages bearing official USDA grade identification when AMS graders are present to certify that the eggs meet the requirements as labeled. Plants in which these grading services are performed are called official plants. There are about 700 shell egg processors registered with the Department that have 3,000 or more laying hens. Of these, 159 are official plants that use USDA's grading service and would be subject to this rule. Of these 159 official plants, the AMS believes approximately 25 would meet the small business definition.

The EPIA, enacted in 1970, authorizes the mandatory inspection of egg products operations and the mandatory surveillance of the disposition of shell eggs that are undesirable for human consumption, with implementing regulations in 7 CFR part 59. Congress amended the refrigeration and labeling requirements of the EPIA as part of the Food, Agriculture, Conservation and Trade Act Amendments of 1991.

The AMS proposed changes to 7 CFR part 59 to implement the 1991 EPIA amendments and to 7 CFR part 56 to make its temperature and labeling requirements consistent with part 59. Before AMS published the final rule, however, the Department consolidated food safety responsibilities under FSIS. Egg products inspection functions under the EPIA were delegated to FSIS, while shell egg surveillance and grading functions continued to be administered by AMS. FSIS promulgated a final rule with request for comments to implement the 1991 EPIA amendments in 7 CFR part 59, later redesignated as 9 CFR part 590, which became effective August 27, 1999. Among other changes, the amendments require a storage temperature at no greater than 45 °F (7.2 °C) for eggs after they have been packed into containers destined for the ultimate consumer.

Since the proposed changes to the shell egg grading regulations were not finalized, AMS is revising 7 CFR part 56 to conform to the FSIS temperature and labeling requirements mandated by the 1991 EPIA amendments. Because the proposed rule was published some years ago, AMS is publishing this rule as an interim final rule with request for comments. We are only making changes deemed necessary to avoid conflict between the requirements of the final rule published by FSIS and the AMS shell egg grading program.

All shell egg processors that currently use or are likely to use USDA grading service typically have over 3,000 layers

and are therefore required to comply with the provisions of the EPIA. Accordingly, all eggs these processors pack into consumer containers for the ultimate consumer must comply with EPIA refrigeration and labeling requirements. Additionally, industry practice is to refrigerate all processed and graded eggs the same way, whether packed into containers destined for the ultimate consumer, or only officially identified as U.S. Grade AA, A, or B.

Therefore, AMS has determined that the provisions of this rule will not impose any additional requirements on small or large egg handlers. Accordingly, it will not have a significant economic impact on a substantial number of small entities that use USDA's voluntary shell egg grading service. In addition, FSIS discussed its RFA analysis when it published its final rule for 7 CFR part 59, and determined that it would not have a significant economic impact on a substantial number of all small entities that produce and process chicken eggs.

Alternatives to the Rule

AMS considered leaving the current temperature requirements in 7 CFR part 56 unchanged. However, those requirements would then be different from the FSIS requirements in 9 CFR part 590 mandated by the 1991 EPIA amendments. Because this would create confusion among users of the regulations by suggesting that storage and transport temperatures above 45 °F (7.2 °C) would be permissible, AMS determined this alternative to be unacceptable. Moreover, by revising grading program storage and transport temperature requirements to be consistent with FSIS, AMS can better preserve the quality of officially identified eggs and better accomplish the program's objective of providing consumers with high quality shell eggs.

AMS also considered leaving unchanged the proposed phrase ''containers destined for the ultimate consumer'' in §§ 56.76 (c)(1) and (f)(1). This phrase does conform to FSIS requirements in 9 CFR part 590. However, occasions can arise where eggs have been officially graded, but are not yet packed into containers for the ultimate consumer. AMS therefore chose to make all shell eggs that are to be officially identified as U.S. Grade AA, A, or B subject to these regulations.

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements that appear in part 56 have been previously approved by the Office of Management and Budget (OMB) under OMB control number 0581–0128. There are no new requirements provided for in this rulemaking action.

Pursuant to 5 U.S.C. 535, it is also found and determined upon good cause that it is impractical, 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**. This action is necessary to conform AMS temperature and labeling requirements in 7 CFR part 56 with recent changes to FSIS requirements in 90 CFR part 590. The FSIS changes became effective on August 27, 1999. Accordingly, the changes made in this action should be implemented as soon as possible to eliminate any confusion in the industry. Furthermore, industry use of this program is voluntary.

List of Subjects in 7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR part 56 is amended as follows:

PART 56—VOLUNTARY GRADING OF SHELL EGGS

1. The authority citation for part 56 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. Section 56.1 is amended by adding alphabetically a new term *ambient temperature* to read as follows:

§ 56.1 Meaning of words and terms defined.

* * * * *

Ambient temperature means the air temperature maintained in an egg storage facility or transport vehicle.

* * * * *

3. In § 56.35, paragraph (d) is added to read as follows:

§ 56.35 Authority to use, and approval of official identification.

* * * * *

(d) *Refrigeration labeling.* All containers bearing official U.S. Grade AA, A, or B identification shall be labeled to indicate that refrigeration is required, e.g., ''Keep Refrigerated,'' or words of similar meaning.

4. Section 56.76 is amended by revising paragraphs (c)(1), (f)(1), (f)(3) and the heading of paragraph (f), to read as follows:

§ 56.76 Minimum facility and operating requirements for shell egg grading and packing plants.

* * * * *

(c) *Cooler room requirements.* (1) Cooler rooms shall be refrigerated and capable of maintaining an ambient temperature no greater than 45 °F (7.2 °C). Accurate thermometers shall be provided for monitoring cooler room temperatures.

* * * * *

(f) *Requirements for eggs that are to be officially identified.* (1) Shell eggs that are to be officially identified as U.S. Grade AA, A, or B shall be placed under refrigeration at an ambient temperature no greater than 45 °F (7.2 °C) promptly after packaging. Shell eggs officially identified as U.S. Grade AA, A, or B, when shipped between official plants, shall be transported at an ambient temperature no greater than 45 °F (7.2 °C).

(2) * * *

(3) Eggs that are to be officially identified as U.S. Grade AA, A, or B shall be packaged only in new or good used cases and packing materials. Cases and packing materials must be reasonably clean, free of mold, mustiness, and off odors, and must be of sufficient strength and durability to adequately protect the eggs during normal distribution.

* * * * *

Dated: October 15, 1999.

Kathleen A. Merrigan,

Administrator,

Agricultural Marketing Service.

[FR Doc. 99–27546 Filed 10–21–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 99–033–2]

Asian Longhorned Beetle; Addition to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Asian longhorned beetle regulations by expanding the quarantined areas in the State of New York to include new areas in New York City and in Nassau and Suffolk Counties. As a result of the interim rule, the interstate movement of regulated articles from those areas is restricted. The interim rule was necessary on an emergency basis to prevent the artificial spread of the Asian longhorned beetle to noninfested areas of the United States.

EFFECTIVE DATE: The interim rule became effective on May 21, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald P. Milberg, Operations Officer, Program Support, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301)734–5255.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective May 21, 1999, and published in the **Federal Register** on May 27, 1999 (64 FR 28713–28715, Docket No. 99–033–1), we amended the Asian longhorned beetle (ALB) regulations in 7 CFR 301.51–1 through 301.51–9 by adding new areas in New York City and in Nassau and Suffolk Counties, NY, to the list of quarantined areas in § 301.51–3(c). As a result of this action, the interstate movement of regulated articles from the quarantined areas is restricted.

Comments on the interim rule were required to be received on or before July 26, 1999. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 604 of the Regulatory Flexibility Act, we have performed a final regulatory flexibility analysis, which is set out below, regarding the economic effects of the interim rule on small entities.

This rule affirms an interim rule that amended the ALB regulations by expanding the quarantined areas in the State of New York to include new areas in New York City and in Nassau and Suffolk Counties. As a result of the interim rule, the interstate movement of regulated articles from those areas is restricted. The interim rule was necessary on an emergency basis to prevent the artificial spread of the Asian longhorned beetle to noninfested areas of the United States.

The small businesses potentially affected by the interim rule are nurseries, arborists, tree removal services, and firewood dealers located within the quarantined areas. We estimate that there are fewer than 100 such businesses in the quarantined areas. They could be affected in two ways. First, if a business wishes to move regulated articles interstate from a quarantined area it must either: (1) Enter into a compliance agreement with APHIS for the inspection and certification or limited permitting of regulated articles for interstate movement from the quarantined area; or (2) present its regulated articles to an APHIS inspector for inspection and obtain a certificate or a limited permit, issued by the APHIS inspector, for the interstate movement of the regulated articles. In either case, the inspections of regulated articles may be inconvenient, but these inspections do not result in any additional direct costs for businesses because APHIS provides the services of the inspector without cost, as long as those services are administered during normal working hours. There is also no cost for the compliance agreement, certificate, or limited permit for interstate movement of regulated articles.

Second, because of ALB infestation, some regulated articles may not qualify for interstate movement under a certificate or limited permit. In this case, a business wishing to move such regulated articles interstate from a quarantined area would be deprived of the opportunity to benefit from the sale of the affected regulated articles in another State. It is difficult to estimate the number or value of regulated articles that would be determined to be infested upon inspection and, therefore, denied a certificate or a limited permit. However, based on our experience, we expect that the number and value would be small. Since 1996, APHIS has not been requested to perform a single inspection in the previously quarantined areas in the State of New York.

ALB has the potential to cause extensive tree damage and serious economic losses to many businesses, both large and small, in the United States. In the eastern region of the United States alone, which includes the north-central States, there are 279 million acres of hardwood forests, representing about 75 percent of the land of all eastern forests. That forest acreage is in addition to land in urban and suburban areas where hardwood trees are common in streets, backyards, and parks. It is estimated that maple trees account for at least 30 percent of the street and park plantings in urban areas. Nursery stock and certain fruit trees are also at risk.

In 1996, the timber processing and manufacturing industry in the northeast region accounted for 7 percent of the employment, 6 percent of the wages and salaries, and 7 percent of the value of shipments of all manufacturing industries in that region. This translates to a workforce of 272,100 employees earning $7.4 billion. Timber processing and manufacturing industry shipments were valued at $44 billion in 1996. These statistics on the timber processing and manufacturing industries reflect products made from softwood timber as well as hardwood timber; however, the effect of hardwood timber on the totals is significant. As an example, hardwood accounted for 52 percent of the net volume of growing stock on timberland in seven northeastern States in 1992.

In 1994, U.S. firms engaged primarily in the production of ornamental nursery products, including nursery stock, employed 134,591 workers who earned $2.2 billion in wages. In 1993, sales of plants (trees and shrubs) by nurseries and greenhouses in the United States totaled an estimated $3.1 billion, of which $212 million was derived from sales in seven northeastern States. During fiscal year 1993, 103.9 million landscape trees were sold in the United States, including 5.7 million in seven northeastern States. Approximately half of all landscape trees sold in the United States are hardwood trees.

The maple syrup industry relies on healthy maple trees, especially the sugar maple, for its production. In 1998, four northeastern States (Maine, New Hampshire, New York, and Vermont) accounted for 70 percent of the value of U.S. maple syrup production ($31.5 million).

The tourism industry in the northeastern States is tied heavily to leaf color changes in the fall, and the maple tree is noted for producing some of the most vivid colors. Between mid-September and late October, for example, the hardwood forests of New England draw 1 million tourists and generate $1 billion in revenue. It is estimated that up to one-fourth of the tourism revenue generated annually in New England is due to the fall foliage displays.

The commercial fruit industry is also at risk, as pear, apple, plum, and citrus trees are susceptible to ALB infestation. We estimate that, for the United States as a whole, the cost of replacing host fruit trees would amount to $5.2 billion alone for pear, apple, and plum orchards and $10.4 billion for citrus. The fruits of host trees would also be affected by a widespread infestation. The average 1995–97 value of utilized production in the United States of the four fruits noted above is estimated at $4.7 billion.

The quarantine imposed by this rule has been determined to be the most effective means of preventing the artificial spread of ALB, as biological controls and pesticides do not presently appear to be effective alternatives. The only other alternative we considered was not to quarantine the newly infested areas; we rejected this alternative because it would fail to prevent the artificial spread of ALB into noninfested areas of the United States.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 64 FR 28713–28715 on May 27, 1999.

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).

Done in Washington, DC, this 18th day of October, 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–27659 Filed 10–21–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 4

[Docket No. 99–13]

RIN 1557–AB60

FEDERAL RESERVE SYSTEM

12 CFR Part 211

[Regulation K; Docket No. R–1012]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 347

RIN 3064–AC15

Extended Examination Cycle For U.S. Branches and Agencies of Foreign Banks

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; and the Federal Deposit Insurance Corporation.

ACTION: Joint final rule.

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 adopting as a joint final rule their joint interim rule implementing section 2214 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). Section 2214 of EGRPRA authorizes the Agencies to extend the examination cycle for certain United States branches and agencies of foreign banks. This joint final rule makes United States branches and agencies of foreign banks with total assets of $250 million or less eligible for an 18-month examination cycle if they meet certain qualifying criteria.

EFFECTIVE DATE: October 22, 1999.

FOR FURTHER INFORMATION CONTACT: *OCC:* Martha Clarke, Senior Attorney, International Activities (202/874–0680); Jose Tuya, Director, International Banking & Finance (202/874–4730); or Karl Betz, Attorney, Legislative and Regulatory Activities (202/874–5090), Office of the Comptroller of the Currency, 250 E Street SW., Washington, D.C. 20219.

Board: Barbara J. Bouchard, Manager, Division of Banking Supervision and Regulation (202/452–3072); or Jonathan D. Stoloff, Counsel, Legal Division (202/452–3269), Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

FDIC: Karen Walter, Chief, International Branch, Division of Supervision (202/898–3540); or Mark Mellon, Counsel, Regulation and Legislation Section, Legal Division (202/898–3854), Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Background

The International Banking Act of 1978 (the IBA),[1] as amended by the Foreign Bank Supervision Enhancement Act of 1991,[2] prescribed a 12-month examination schedule for U.S. branches and agencies of foreign banks. Section 2214 of EGRPRA modified that requirement by amending section 3105(c)(1)(C) of the IBA to provide that U.S. branches and agencies of foreign banks are subject to on-site examination as frequently as national banks and state banks are examined by their appropriate federal banking agencies.[3]

In general, national banks and state banks must be examined every 12 months. However, section 111 of the Federal Deposit Insurance Corporation Improvement Act of 1991[4] authorized an 18-month examination cycle for certain national banks and state banks with a composite rating of 1 under the Uniform Financial Institutions Rating System (UFIRS) and total assets of $100 million or less. Subsequently, section 306 of the Riegle Community Development and Regulatory Improvement Act of 1994[5] expanded the availability of the 18-month examination cycle to certain national banks and state banks with a composite rating of 1 under UFIRS and total assets of less than $250 million, as well as to certain national banks and state banks with a composite rating of 2 under UFIRS and total assets of $100 million or less. Finally, section 2221 of EGRPRA amended section 10(d) of the Federal Deposit Insurance Act (FDI Act)[6] to provide that at any time after September 23, 1996, U.S. bank supervisory agencies could extend the 18-month examination cycle to certain national banks and state banks with a composite rating of 2 and total assets of $250 million or less. Effective April 2, 1998,

[1] Pub. L. 95–369, 92 Stat. 607.

[2] Pub. L. 102–242, 105 Stat. 2286.

[3] Section 2214 of EGRPRA, Pub. L. 104–208, 110 Stat. 3009. Section 3105(c)(1)(C) is codified at 12 U.S.C. 3105(c)(1)(C).

[4] Pub. L. 102–242, 105 Stat. 2236 (section 111 is codified at 12 U.S.C. 1820(d)).

[5] Pub. L. 103–325, 108 Stat. 2160.

[6] Section 10(d) of the FDI Act is codified at 12 U.S.C. 1820(d)(10).

the Agencies issued a final rule that extended the examination cycle to 18 months for certain national banks and state banks that satisfy the requirements of section 2221 of EGRPRA. 63 FR 16377 (April 2, 1998). To be eligible for the extended cycle, the national bank or state bank must:

(a) Have total assets of $250 million or less;

(b) Be rated a composite 2 or better under the UFIRS;

(c) Be well capitalized;

(d) Be well managed;

(e) Not be subject to a formal enforcement action; and (f) Not have experienced a change of control during the preceding 12-month period in which a full-scope, on-site examination would have been required but for section 10(d) of the FDI Act.

Interim Rule

To implement section 2214 of EGRPRA, the Agencies issued a joint interim rule on August 28, 1998, that similarly extended the examination cycle for certain U.S. branches and agencies of foreign banks. 63 FR 46118. Under the joint interim rule, a U.S. branch or agency of a foreign bank may be considered for an 18-month examination cycle if the branch or agency meets certain criteria and if there are no other factors that cause the appropriate federal banking agency to conclude that more frequent examinations of the branch or agency are appropriate. To be eligible for an 18-month examination cycle, the U.S. branch or agency of a foreign bank must:

(a) Have total assets of $250 million or less;

(b) Have received a composite ROCA [7] supervisory rating of 1 or 2 at its most recent examination;

(c) Satisfy the requirements of either paragraph (1) or (2):

(1) The foreign bank's most recently reported capital adequacy position consists of, or is equivalent to, Tier 1 and total risk-based capital ratios of at least 6 percent and 10 percent, respectively, on a consolidated basis; or

(2) The branch or agency has maintained, on a daily basis over the past three quarters, eligible assets in an amount not less than 108 percent of third party liabilities (determined consistent with applicable federal and state law) and sufficient liquidity is currently available to meet its obligations to third parties;

(d) Not be subject to a formal enforcement action or order by the Board, FDIC, or OCC; and

(e) Not have experienced a change in control during the preceding 12-month period in which a full-scope, on-site examination would have been required but for section 3105(c)(1)(C) of the IBA.

The Agencies noted in the joint interim rule that each Agency retains the authority to examine a U.S. branch or agency of a foreign bank as frequently as the Agency deems necessary. The joint interim rule also provided that, in determining whether a U.S. branch or agency of a foreign bank is eligible for an extended examination cycle, the Agencies may consider additional factors, including whether:

(a) Any of the individual components of the ROCA rating of the U.S. branch or agency is rated 3 or worse;

(b) The results of any off-site supervision indicate a deterioration in the condition of the U.S. branch or agency;

(c) The size, relative importance, and role of a particular U.S. branch or agency when reviewed in the context of the foreign bank's entire U.S. operations otherwise necessitate an annual examination (including, for example, whether the office generates a significant level of assets that are booked elsewhere); and

(d) The condition of the foreign bank itself gives rise to a need to examine the U.S. branch or agency every 12 months.

The Agencies noted further that they generally will determine whether to apply the 18-month examination cycle to a particular U.S. branch or agency based on the overall risk assessment for that office, as well as the factors noted in the joint interim rule.

Since U.S. branches and agencies of foreign banks do not receive separate examination ratings of their management, the Agencies stated in the joint interim rule that they will use certain criteria as a proxy for the well managed criterion applicable to U.S. banks, including the ROCA component and composite ratings, the existence of any formal enforcement action or order issued by an Agency, and the other discretionary standards described in the preceding paragraph.

The joint interim rule became effective immediately, but the Agencies invited public comment on any aspect of the joint interim rule. As discussed in the following paragraphs, the commenters strongly favored adopting the expanded examination cycle as set forth in the joint interim rule.

Comments Received

In response to their request for comment on the joint interim rule, the Agencies received a total of seven comments, including six from banks and one from a trade association. The commenters strongly supported the expanded examination cycle for U.S. branches and agencies of foreign banks. They agreed that the expanded examination cycle would reduce regulatory burden on smaller, well-run branches and agencies that do not pose significant supervisory concerns.

One commenter, while expressing support for the rule, requested that the Agencies clarify four points.

First, the commenter sought clarification that the two tests for determining whether a branch or agency is well capitalized are alternative tests and that use of one test for one examination cycle does not preclude use of the other test in subsequent exam cycles. The commenter is correct. The criterion based on capital states that the U.S. branch or agency must satisfy the requirements of either test. Reliance on one of the eligibility tests for an extended examination cycle does not preclude subsequent reliance on the other test. The two capital adequacy tests contained in this rule are limited in their applicability to determining whether a branch or agency is eligible for an extended examination cycle. These two capital adequacy tests have no effect on special asset maintenance requirements.

Second, the commenter also requested guidance as to how the ''well capitalized'' criterion will be implemented. Capital adequacy will be determined using regulatory and supervisory reports, and public information where appropriate. The foreign bank's capital adequacy may be assessed on the basis of the home country supervisor's capital standards if those standards are in all respects consistent with the Basel Accord.

Third, the commenter requested that the Agencies clarify whether both eligible assets and average third party liabilities are to be determined consistent with applicable federal and state law. The commenter noted that the wording of the alternative capital test using eligible assets in the interim rule suggested that average third party liabilities were not to be determined in accordance with applicable federal and state law. The Agencies have amended that provision in the final rule to clarify that both eligible assets and average third party liabilities are to be determined consistent with applicable federal and state law.

[7] The supervisory rating system for branches and agencies of foreign banks is referred to as ROCA. The four components of ROCA are: risk management, operational controls, compliance, and asset quality.

Finally, the commenter asked how the Agencies would determine the sufficiency of a branch's or agency's liquidity under the alternative capital test. The alternative capital test measures eligible assets against average third party liabilities over the past three quarters. The requirement that sufficient liquidity is available to meet obligations to third parties is designed to ensure that the branch or agency is able to meet unexpected demands in the event of a sudden economic downturn or other adverse events affecting the foreign bank or its U.S. offices subsequent to the last quarter measured under the alternative capital test. Accordingly, determinations regarding the sufficiency of a branch's or agency's liquidity need to be made on a case-by-case basis.

Final Rule

In light of the comments received, the Agencies are adopting the joint interim rule as a joint final rule with the clarifications discussed above. Under the joint final rule, in order to be eligible for the extended examination cycle, a U.S. branch or agency of a foreign bank must:

(a) Have total assets of $250 million or less;

(b) Have a composite ROCA supervisory rating of 1 or 2 at its most recent examination;

(c) Meet either of the ''well capitalized'' criteria noted above;

(d) Not be subject to a formal enforcement action or order by the Board, FDIC, or OCC; and

(e) Not have undergone a change in control during the preceding 12-month period in which a full-scope, on-site examination would have been required but for section 3105(c)(1)(C) of the IBA. For purposes of this rule, a branch or agency of a foreign bank will be deemed to have undergone a change in control if it is sold to another foreign bank or if there has been a change in control of the foreign bank.

The Agencies may consider other factors in determining whether a U.S. branch or agency that meets the foregoing criteria should not be eligible for an extended examination cycle. These discretionary factors include whether:

(a) Any of the individual components of the ROCA rating of the U.S. office is rated 3 or worse;

(b) The results of any off-site supervision indicate a deterioration in the condition of the office;

(c) The size, relative importance, and role of a particular office when reviewed in the context of the foreign bank's entire U.S. operations otherwise necessitates an annual examination (including, for example, whether the office generates a significant level of assets that are booked elsewhere); and

(d) The condition of the foreign bank itself gives rise to such a need.

The Agencies will base their determination whether to apply the 18-month examination cycle to a particular U.S. branch or agency on the overall risk assessment for that office. Each Agency retains the authority to examine a branch or agency within its jurisdiction as frequently as the Agency deems necessary. Thus, for instance, the appropriate Agency may determine that changes in the level or direction of risk in a branch or agency or in the level of third party liabilities may warrant examining the branch or agency before the expiration of an 18-month exam cycle.

The Agencies believe that an extended examination cycle for eligible U.S. offices of foreign banks is consistent with principles of safety and soundness because it will permit the Agencies to focus their resources on those offices that present the most immediate supervisory concerns while concomitantly reducing the regulatory burden on smaller offices that do not pose a similar level of concern. The Agencies will continue to use off-site supervision techniques, including the submission of regulatory reports, to monitor the condition and any changes in the risk profile of offices scheduled to be examined on the extended 18-month examination cycle.

Immediate Effective Date

The Agencies find good cause for dispensing with the 30-day delayed effective date prescribed by the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.* The expanded examination cycle was effective upon publication of the joint interim rule in August 1998. This joint final rule adopts the interim rule with minor changes. While the Agencies invited interested parties to comment on the rule at that time, each Agency already has implemented the expanded examination cycle. Accordingly, depository institutions will not require any additional time to adjust their policies or practices in order to comply with the joint final rule.

Regulatory Flexibility Act

A regulatory flexibility analysis under the Regulatory Flexibility Act is only required when an agency is required to publish a general notice of proposed rulemaking for any proposed rule. 5 U.S.C. 603. As noted previously, the Agencies have determined that it was not necessary to publish a notice of proposed rulemaking for this joint final rule. Accordingly, a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act

Title II of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)[8] provides generally for agencies to report rules to Congress and the General Accounting Office (GAO) for review. The reporting requirement is triggered when a Federal Agency issues a final rule. The Agencies filed the appropriate reports with Congress and the GAO as required by SBREFA. The Office of Management and Budget has determined that the joint final rule does not constitute a ''major rule'' as defined by SBREFA.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Agencies have determined that no collections of information pursuant to the Paperwork Reduction Act are contained in this joint final rule.

OCC Executive Order 12866 Statement

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

OCC Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, 109 Stat. 48 (March 22, 1995) (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 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. 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. Because the OCC has determined that this joint final rule will not result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. As discussed in the preamble, this joint final rule will have the effect of reducing regulatory burden on certain national banks.

[8] Pub. L. 104–121.

List of Subjects

12 CFR Part 4

Freedom of information, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

12 CFR Part 347

Allocated transfer risk reserve, Banks, banking, Bank deposit insurance, Bank mergers, Credit, Foreign banking, Foreign branches, Foreign investments, Insured branches, International lending, International operations, Investments, Reporting and recordkeeping requirements.

Office of the Comptroller of the Currency, 12 CFR Chapter I, Authority and Issuance

For the reasons set forth in the joint preamble, part 4 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 4—ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM

Accordingly, the interim rule amending 12 CFR Part 4, which was published at 63 FR 46118 on August 28, 1998, is adopted as a final rule with the following changes.

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

Authority: 12 U.S.C. 93a. Subpart A also issued under 5 U.S.C. 552; 12 U.S.C. 481, 1820(d), and 3105(c)(1). Subpart B also issued under 5 U.S.C. 552; E.O. 12600 (3 CFR, 1987 Comp., p. 235). Subpart C also issued under 5 U.S.C. 301, 552; 12 U.S.C. 481, 482, 1821(o), 1821(t); 18 U.S.C. 641, 1905, 1906; 31 U.S.C. 9701. Subpart D also issued under 12 U.S.C. 1833e.

2. In § 4.7, paragraphs (b)(1)(iii)(B) and (b)(2) introductory text are revised to read as follows:

§ 4.7 Frequency of examination of Federal agencies and branches.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(B) The branch or agency has maintained on a daily basis, over the past three quarters, eligible assets in an amount not less than 108 percent of the preceding quarter's average third party liabilities (determined consistent with applicable federal and state law), and sufficient liquidity is currently available to meet its obligations to third parties;

* * * * *

(2) *Discretionary standards.* In determining whether a Federal branch or agency that meets the standards of paragraph (b)(1) of this section should not be eligible for an 18-month examination cycle pursuant to this paragraph (b), the OCC may consider additional factors, including whether:

* * * * *

Dated: September 17, 1999.

John D. Hawke, Jr.,

Comptroller of the Currency.

Federal Reserve System, 12 CFR Chapter II, Authority and Issuance

For the reasons set forth in the joint preamble, the Board amends 12 CFR Part 211 as follows:

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

Subpart B—Foreign Banking Organizations

Accordingly, the interim rule amending 12 CFR Part 211, which was published at 63 FR 46118 on August 28, 1998, is adopted as a final rule with the following changes.

1. The authority citation for part 211 continues to read as follows:

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1835a, 1841 *et seq.*, 3101 *et seq.*, and 3901 *et seq.*

2. In § 211.26, paragraphs (c)(2)(i)(C)(*2*) and (c)(2)(ii) introductory text are revised to read as follows:

§ 211.26 Examination of offices and affiliates of foreign banks.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(C) * * *

(*2*) The branch or agency has maintained on a daily basis, over the past three quarters, eligible assets in an amount not less than 108 percent of the preceding quarter's average third party liabilities (determined consistent with applicable federal and state law) and sufficient liquidity is currently available to meet its obligations to third parties;

* * * * *

(ii) *Discretionary standards.* In determining whether a branch or agency of a foreign bank that meets the standards of paragraph (c)(2)(i) of this section should not be eligible for an 18-month examination cycle pursuant to this paragraph (c)(2), the Board may consider additional factors, including whether:

* * * * *

By Order of the Board of Governors of the Federal Reserve System, October 12, 1999.

Jennifer J. Johnson,

Secretary of the Board.

Federal Deposit Insurance Corporation, 12 CFR Chapter III, Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the FDIC amends part 347 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 347—INTERNATIONAL BANKING

1. The authority citation for part 347 continues to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 1828, 3103, 3104, 3105, 3108; Title IX, Pub. L. No. 98–181, 97 Stat. 1153.

2. Section 347.214 is revised to read as follows:

§ 347.214 Examination of branches of foreign banks.

(a) *Frequency of on-site examination.* Each branch or agency of a foreign bank shall be examined on-site at least once during each 12-month period (beginning on the date the most recent examination of the office ended) by:

(1) The Board of Governors of the Federal Reserve System (Board);

(2) The FDIC, if an insured branch;

(3) The Office of the Comptroller of the Currency (OCC), if the branch or agency of the foreign bank is licensed by the Comptroller; or

(4) The state supervisor, if the office of the foreign bank is licensed or chartered by the state.

(b) *18-month cycle for certain small institutions.* (1) *Mandatory standards.* The FDIC may conduct a full-scope, on-site examination at least once during each 18-month period, rather than each 12-month period as provided in paragraph (a) of this section, if the insured branch:

(i) Has total assets of $250 million or less;

(ii) Has received a composite ROCA supervisory rating (which rates risk management, operational controls, compliance, and asset quality) of 1 or 2 at its most recent examination;

(iii) Satisfies the requirement of either the following paragraph (b)(iii)(A) or (B):

(A) The foreign bank's most recently reported capital adequacy position consists of, or is equivalent to, Tier 1 and total risk-based capital ratios of at least 6 percent and 10 percent, respectively, on a consolidated basis; or

(B) The insured branch has maintained on a daily basis, over the past three quarters, eligible assets in an amount not less than 108 percent of the preceding quarter's average third party liabilities (determined consistent with applicable federal and state law) and sufficient liquidity is currently available to meet its obligations to third parties;

(iv) Is not subject to a formal enforcement action or order by the Board, FDIC, or the OCC; and

(v) Has not experienced a change in control during the preceding 12-month period in which a full-scope, on-site examination would have been required but for this section.

(2) *Discretionary standards.* In determining whether an insured branch that meets the standards of paragraph (b)(1) of this section should not be eligible for an 18-month examination cycle pursuant to this paragraph (b), the FDIC may consider additional factors, including whether:

(i) Any of the individual components of the ROCA supervisory rating of an insured branch is rated ''3'' or worse;

(ii) The results of any off-site monitoring indicate a deterioration in the condition of the insured branch;

(iii) The size, relative importance, and role of a particular insured branch when reviewed in the context of the foreign bank's entire U.S. operations otherwise necessitate an annual examination; and

(iv) The condition of the parent foreign bank gives rise to such a need.

(c) *Authority to conduct more frequent examinations.* Nothing in paragraphs (a) and (b) of this section limits the authority of the FDIC to examine any insured branch as frequently as it deems necessary.

By order of the Board of Directors.

Dated at Washington, DC, this 20th day of April, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–27624 Filed 10–21–99; 8:45 am]

BILLING CODE 4810–33–P 6210–01–P 6714–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions; Statutory Lien

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: Pursuant to its practice of periodically reviewing existing regulations and policy statements, NCUA proposed to update, clarify and convert to a regulation the provisions of an existing Interpretive Ruling and Policy Statement implementing the statutory lien authority granted by the Federal Credit Union Act. As revised to reflect comments on the proposed rule and to incorporate other improvements, the final rule implements the statutory right of federal credit unions to impress a lien against the shares and dividends of their members, and to enforce that lien to satisfy members' outstanding financial obligations due and payable to the credit union, even when such obligations are not secured by shares.

DATES: Effective November 22, 1999.

FOR FURTHER INFORMATION CONTACT: Steven W. Widerman, Trial Attorney, Division of Litigation & Liquidations, Office of General Counsel, at the above address or telephone: (703) 518–6557.

SUPPLEMENTARY INFORMATION:

I. Background

A. Prior Interpretations of Statutory Authority

Section 107(11) of the Federal Credit Union Act, 12 U.S.C. 1757(11) (hereinafter ''§ 1757(11)''), provides that a federal credit union ''shall have [the] power * * * to impress and enforce a lien upon the shares and dividends of any member to the extent of any loan made to him and any dues or charges payable by him.'' Beginning in 1979, NCUA took the position that a federal credit union could enforce the lien granted by § 1757(11) only after it had obtained a court judgment on the debt, unless state law allowed enforcement of the lien without first obtaining such a judgment. NCUA, *Manual of Laws Affecting Federal Credit Unions* 1–17 (6/78 ed.); NCUA, *Credit Manual for Federal Credit Unions* 29 (12/79 ed.). Once the prerequisite judgment was obtained, the credit union could apply the member's shares to his or her outstanding loan balance.

In 1982, NCUA reconsidered this interpretation of § 1757(11) because experience indicated that it placed credit unions at a disadvantage compared to other financial institutions, which generally can offset a borrower's loan without first obtaining a court judgment. 47 FR 44340 (October 7, 1982). As a result, NCUA issued Interpretive Ruling and Policy Statement No. 82–5 (''IRPS 82–5''), reinterpreting § 1757(11) to authorize a credit union to enforce the lien on the shares and dividends of a member without first obtaining a court judgment against the member, state law to the contrary notwithstanding. 47 FR 57483 (December 27, 1982). The NCUA Board concluded, and still maintains, that the reinterpretation of § 1757(11) is more consistent with Congressional intent.

B. Proposed Rule

In 1987, NCUA issued Interpretive Ruling and Policy Statement No. 87–2 entitled ''Developing and Reviewing Government Regulations,'' 52 FR 35231 (Sept. 18, 1987) (''IRPS 87–2''). IRPS 87–2 established the policy of reviewing all existing NCUA regulations every three years for the purpose of updating, clarifying and simplifying them, and eliminating redundant and unnecessary provisions. *Id.* at 35232.

To fulfill the purpose of IRPS 87–2, NCUA issued a proposed rule updating, clarifying and converting to a regulation the provisions of IRPS 82–5. 63 FR 57943 (October 29, 1998). By the comment deadline of January 27, 1999, NCUA received 27 comments in response to the proposed rule. Comments were submitted by nine state credit union leagues, ten individual credit unions, four attorneys who represent credit unions, three national credit union trade associations, and one banking industry trade association.

C. Final Rule

There are two principal differences between the proposed rule and the final rule. The first is that, consistent with the overwhelming consensus of comments, the final rule abandons the shift in policy since IRPS 82–5 toward limiting application of the statutory lien to loan-related indebtedness to the credit union, e.g., unpaid loan principal and interest and charges such as a late fee and collection expenses. The final rule reads § 1757(11) expansively to apply the statutory lien to outstanding member financial obligations of any kind owed to the credit union. § 701.39(a)(5). The second principal difference is that, instead of requiring separate disclosure at the time a lien is impressed, the final rule codifies credit unions' nearly uniform practice of putting members on notice in advance, in account opening and loan documentation, of the credit union's right to impress a lien and to enforce it without further notice. § 701.39(a)(4).

II. Section-by-Section Analysis of Comments

Six commenters favored retaining the statutory lien authority in an IRPS instead of converting it to a rule, one favored the rule over an IRPS, and one wished to eliminate both the IRPS and the rule in favor of the language of § 1757(11) itself. Converting IRPS 82–5 to a regulation is consistent with NCUA's preference for using regulations

to implement statutory mandates and using IRPSs to offer guidance and articulate policy.

Those who oppose conversion to a rule generally contend that credit unions may be misled to believe that the rule comprehensively addresses the statutory lien when in fact its operation may in certain respects rely on state laws which the rule neither expressly preempts nor expressly incorporates by reference. As described below, the final rule addresses this problem by itemizing preempted state law prerequisites in one case, § 701.39(d)(3), and elsewhere by inserting the proviso ''except as otherwise provided by law,'' which the rule defines. § 701.39(a)(1).

Two commenters requested that NCUA republish a proposed rule on statutory liens for a second round of public comments. This suggestion is premature, having been made before NCUA had even had an opportunity to react to the comments it received in response to the proposed rule. Furthermore, now that NCUA has reviewed those comments, a substantial number of suggested revisions have been adopted in the final rule. As a result, the final rule is quite different from the proposed rule, yet for the most part does not depart from the substance of IRPS 82–5. Thus, NCUA has concluded that a further round of comments is unwarranted.[1]

A. Section 701.39(a)—Definitions

The proposed rule had no separate section devoted to definitions used in the rule, although several terms were defined in the text of the rule, e.g., ''statutory lien'' and ''member.'' NCUA concurs with commenters who suggested improving the rule by defining certain terms used frequently throughout. Thus, the final rule combines the existing and the new definitions in § 701.39(a).

1. ''*Except as otherwise provided by law*'' or ''*except as otherwise provided by federal law*.'' The proposed rule expressly provided that ''A statutory lien pursuant to section 107(11) of the Act, 12 U.S.C. 1757(11), preempts state laws governing the right of a creditor to impress and enforce a lien, as well as the common law right of set-off.'' The purpose of this ''preemption'' provision was to put credit unions in parity with other federally-insured financial institutions by exempting them from state laws requiring a creditor to obtain a court judgment on the debt before enforcing a lien.

Two commenters complained that the language of the provision as proposed is overbroad, sweeping within its ambit state laws that may benefit credit unions and on which they should be free to rely. Both commenters suggest that the final rule enumerate which state laws it preempts and which ones it does not preempt. One commenter advocates not preempting the common law right of set-off, so it will remain available to credit unions which prefer that over the statutory lien.

To eliminate ambiguity caused by the proposed rule's blanket preemption provision, the final rule deletes that provision. In its place, NCUA has inserted the qualifying language ''except as otherwise provided by law'' or ''by federal law'' as a preface to several provisions of the rule.[2] *See* §§ 701.39(b), (c) and (d)(1). This proviso is defined as ''a federal and/or state law, as the case may be, which supersedes a requirement of [the rule.]'' ''Except as otherwise provided *by law*'' refers to both state *and* federal laws; ''except as otherwise provided *by federal law*'' refers to federal laws only. (emphasis added.) Section 701.39(a)(1) not only signals the possible existence of superseding federal and/or state law requirements, but alerts credit unions of their responsibility to ''ascertain whether such statutory or case law exists and is applicable.''

2. ''*Impress*.'' NCUA recognizes that ''impress'' is a term of art which may be unfamiliar. Therefore, the final rule defines it as the act of attaching a lien to a member's account, which makes the lien enforceable against the funds in that account. § 701.39(a)(2).

3. ''*Member*.'' The proposed rule defined a ''member'' for statutory lien purposes to include not only the maker of a note or equivalent instrument establishing indebtedness to the credit union, but also co-makers and guarantors. Four commenters supported the effort to extend the reach of the statutory lien to accommodation parties, but suggested expanding the definition to encompass *any* member who is responsible for repayment of an obligation to the credit union. This would address the practice by credit unions of using various different terms to refer to different levels of responsibility for repayment, such as maker, co-maker, guarantor, co-signer, endorser, surety, accommodation party. To that end, the final rule expands the definition of ''member'' to include ''any member who is primarily or secondarily responsible for an outstanding financial obligation to the credit union, including without limitation an obligor, maker, co-maker, guarantor, co-signer, endorser, surety or accommodation party.'' § 701.39(a)(3).

4. ''*Notice*.'' In response to comments about the vagueness and timing of the ''notice'' credit unions must give when impressing a statutory lien, *see* § 701.39(c), the final rule defines the term ''notice'' as written notice disclosing that the credit union has the right to impress and enforce a statutory lien in the event of failure to satisfy a financial obligation, and may do so without further notice to the member. § 701.39(a)(4). In a significant departure from the proposed rule, the definition now provides that notice may be given at the time, *or at any time before*, the member incurs the financial obligation. In recognition of the increasing use of paperless electronic transactions, NCUA interprets ''written notice'' to include a notice conveyed in writing electronically, *e.g.*, ''on-line'' or via e-mail, unless otherwise required by federal law or regulation. The rule contemplates a notice disclosing in plain language the practical effect of a statutory lien, rather than a technical definition of that term.

5. ''*Statutory lien*.'' The proposed rule defined a statutory lien under § 1757(11) as a security interest in a member's shares and dividends. Seven commenters insisted that this definition is technically incorrect and inappropriate for three reasons. First, because the statutory lien is a right conferred by statute, whereas a security interest is given voluntarily or consensually. *Compare* 11 U.S.C. 101(51) *with* 11 U.S.C. 101(53). Second, because a security interest is by definition an interest generally limited to tangible property or fixtures. *See* Black's Law Dictionary 1357, 1413 (6th ed. 1990) (''security interest'' and ''statutory lien''); UCC § 1–201(37); 26 U.S.C. 6323(h). Third, because ''security interest'' is a term of art associated with the Uniform Commercial Code (UCC), the statutory lien authority may be subject to interpretations under UCC Article 9 affecting attachment and enforceability.[3] These criticisms are well taken. Therefore, the final rule redefines the term ''statutory lien'' as ''a right in or claim to a member's shares and dividends equal to the amount of

[1] Two commenters requested that NCUA delay the effective date of the final rule to allow them to amend by-laws, policies and account and loan documentaiton to accommodate the proposed separate notice requirement. Because the final rule abandons that proposal, the request is declined.

[2] In one provision § 701.39(d)(3), the final rule enumerates two specific prerequisites of state law from which the rule exempts federal credit unions when enforcing a statutory lien.

[3] The UCC expressly provides that Article 9 ''does not apply * * * to a lien given by statute or other rule of law * * *.'' UCC §§ 9–102(2), 9–104(c).

that member's outstanding financial obligations to the credit union, as that amount varies from time to time.'' § 701.39(a)(5).[4]

The proposed rule limited application of the statutory lien to outstanding indebtedness to the credit union consisting of ''loan principal and interest and other charges'' owed by a member as either maker, co-maker or guarantor of the indebtedness. This provision reflected a policy shift, articulated since IRPS 82–5, toward narrowing the scope of the statutory lien to loan-related indebtedness. NCUA received 23 comments overwhelmingly challenging this interpretation of § 1757(11). As the commenters uniformly insisted, the statutory language of § 1757(11) imposes no such limitation and, as noted in the preamble of the proposed rule, ''can be read to apply to member financial obligations beyond [loan-related] indebtedness to the credit union.'' 63 FR 57994. The comments caused NCUA to reconsider and to abandon its interpretation limiting the scope of § 1757(11) to loan-related indebtedness. Accordingly, the final rule expands the definition of ''statutory lien'' to encompass any ''outstanding financial obligation to the credit union,'' not just loan-related indebtedness. § 701.39(a)(5).

B. Section 701.39(b)—Superior Claim

1. *Subordination.* The proposed rule provided that a statutory lien ''gives the federal credit union priority over all other creditors when claims are asserted against members' account(s).'' Five commenters contend that this is an overstatement because the credit union's lien remains subordinate to certain limited types of claims, *e.g.*, an IRS levy and a perfected security interest in a share certificate. NCUA agrees. Instead of attempting to enumerate all possible instances where a statutory lien does *not* have priority, NCUA has revised the final rule to read: ''Except as otherwise provided by law, a statutory lien gives the federal credit union priority over other creditors when claims are asserted against a member's account(s).'' § 701.39.

2. *Exemptions.* Similarly, the proposed rule contained an ''exemptions'' provision enumerating three instances in which federal law bars resort to a statutory lien to offset an outstanding financial obligation.[5] Nine commenters raised two principal objections to this provision. First, that an itemized list of exemptions which is less than complete—as they contend was the case in the proposed rule—is ''a trap for the unwary'', who may be misled to rely on it as the sole, comprehensive source of interpretation of federal law exemptions. These commenters advocate either eliminating the proposed ''exemption'' provision altogether from the final rule, or making it truly comprehensive by completely enumerating all federal law exemptions. Second, that the final rule should not attempt to itemize specific statutory lien exemptions because, far from being uniformly settled, the applicability of each is subject to evolving interpretation of the law based on the facts of each case. Taking account of these comments, NCUA has decided to omit an ''exemptions'' provision from the final rule and, instead, to put credit unions on notice by prefacing the sections on impressing and enforcing a statutory lien (§§ 701.39(b) and (c)) with the qualifying language ''except as otherwise provided by federal law''—a proviso which the rule defines. § 701.39(a)(1).[6]

C. Section 701.39(c)—Impressing a Statutory Lien

Following IRPS 82–5, the proposed rule authorized credit unions to impress a statutory lien in either of three ways: (1) By noting the existence of the lien in the credit union's records of the member's account(s); (2) by reciting in a loan document signed by the member that shares and dividends are subject to the lien; or (3) by duly adopting a by-law or policy of the board of directors establishing a statutory lien to satisfy its members' delinquent indebtedness. *See, e.g., Federal Credit Union Bylaws*, Art. III, § 5(d) (12/87 ed.). In contrast to IRPS 82–5, the proposed rule required written disclosure to the member at the time a statutory lien is impressed by notation on a member's account record, or through a duly adopted by-law or policy. Under the definition of ''member,'' this also would require notice to accommodation parties. *See* § 701.39(a)(2). The final rule modifies the proposed options as follows.

1. *Separate notice proposal.* Eight commenters oppose the new so-called ''separate notice'' requirement altogether, and three prefer it in modified form, despite acknowledging its purpose—to ensure that members are aware when their credit union exercises its right to impress a lien on their accounts. The commenters object that the separate notice requirement imposes an undue regulatory burden because: (1) It is redundant if a credit union already has included such notice in the member's account opening documentation; (2) it could be interpreted as demanding an explanation of the literal term ''statutory lien,'' instead of or in addition to disclosure of its *effect* on a member's account, thereby forcing credit unions to modify and reprint account and loan forms; and (3) there is no apparent record of disclosure problems justifying additional notice to members. One commenter condemned the entire provision on impressing a lien as a regulatory burden at odds with the Regulatory Flexibility Act; compliance with that statute is addressed below in section III of the preamble.

NCUA has determined that its disclosure objective still can be accomplished by a notice requirement that is consistent with credit unions' nearly uniform practice of disclosing the right to impress and enforce a statutory lien in advance in account opening and loan documentation. The final rule's definition of ''notice'' codifies this practice. § 701.39(a)(4). Moreover, the definition abandons the proposal to require separate notice at the time a loan is granted or a financial obligation is incurred even when such notice already was given by a method prescribed in the rule. This relaxation of the original separate notice proposal should minimize, if not completely eliminate, any additional regulatory burden.

2. *Account documentation.* The language from IRPS 82–5 allowing a lien to be impressed ''by noting the existence of the lien of the on the credit union's records of the member's account(s)'' is archaic. The modern equivalent of ''noting the existence of the lien'' is to give members advance notice of the right to impress and enforce it, and the

[4] A statutory lien is a ''floating'' lien, meaning it ''floats'' as the outstanding balance of the obligation varies from time to time, and as the member's account balance is reduced by withdrawals or increased by deposits or dividend payments. When the statutory lien is enforced, it applies to all funds in the account at that point, which may be less than the outstanding balance of the obligation.

[5] Impressing a lien upon an Individual Retirement Account, 26 U.S.C. 408(a)(4); enforcing a lien to offset credit card debt, 12 CFR 226.12(d); and enforcing a lien on a member's account which is the subject of an ''automatic stay'' in bankruptcy. 11 U.S.C. 362(a)(7).

[6] Four commenters criticized guidance in the preamble (but not in the proposed rule itself) for failing to take account of the impact of state law definitions of ownership interests in a credit union account e.g., partnerships, trusts, tenants by the entirety. To prevent unequal treatment of federal credit unions and state-chartered credit unions, the final rule does not preempt these definitions. Thus, the definition of an ownership interest may restrain a credit union from enforcing a lien on the account of a member who falls outside the definition of the member who has failed to satisfy a financial obligation to the credit union. For example, if an individual member fails to repay a loan to the credit union, the credit union may impress and enforce a lien on that member's other personal accounts at the credit union; however, the credit union may *not* enforce a lien on an account owned by that member as tenant by the entirety with his or her spouse.

modern equivalent of a ''credit union's record(s) of the member's account(s)'' in which that disclosure is made is an account agreement or other account opening documentation. To reflect this reality, the final rule permits credit unions to impress a statutory lien ''by giving notice thereof in the member's account agreement(s) or other account opening documentation.'' § 701.39(c)(1).

3. *Signature requirement.* Two commenters questioned the signature requirement for a loan document reciting that shares and dividends are subject to a lien, pointing out that loan documents such as credit card agreements do not require the borrower's signature, and that loans increasingly are contracted for through paperless electronic transactions in which a signature is anachronistic. To account for these developments, the final rule provides that a loan document must be ''signed or otherwise acknowledged by the member(s).'' § 701.39(c)(2).

4. *Board policy.* Seven commenters who advocated permitting a statutory lien to be impressed by means of a duly-adopted policy of the board of directors apparently overlooked the proposed rule's provision exactly to that effect. It is retained without modification in the final rule. § 701.39(b)(3).

D. Section 701.39(d)—Enforcing a Statutory Lien

1. *Application of funds.* Under proposed rule, a statutory lien is enforced on a member's account ''by debiting the balance of funds in the account and applying it to offset the member's outstanding indebtedness * * *.'' Although no comment addressed this subsection, the following conforming and technical revisions have been made. First, the proviso ''Except as otherwise provided by federal law'' now precedes the text of the subsection. § 701.39(d)(2). Second, the words ''applying [the balance] to offset the member's indebtedness, including unpaid loan principal and interest, and fees and charges attributable to the indebtedness'' have been replaced by the words ''applying [funds] to the extent of any of the member's outstanding financial obligations due and payable to the credit union.'' *Id.*

2. *Default required.* The proposed rule required that a member be in default on his or her indebtedness to the credit union before it can enforce its statutory lien.[7] The one comment addressing this provision suggested defining ''default'' for enforcement purposes as ''the failure to satisfy a financial obligation.'' The final rule adopts this suggestion, but also inserts the word ''outstanding'' preceding ''financial obligation.'' § 701.39(d)(2). NCUA interprets the words ''financial obligation'' to encompass not only a repayment obligation, but related nonmonetary obligations such as a restriction on the sale of collateral securing a loan.

3. *Neither judgment nor set-off required.* The proposed rule provides that a court judgment on the member's debt is not a prerequisite to enforcement of a statutory lien. This provision expressly preempts state laws to the contrary. No comment addressed this subsection. However, to indicate that credit unions also need not exercise the equitable right of set-off as a prerequisite to enforcing a statutory lien, a clause to that effect has been inserted within this subsection. § 701.39(d)(3).

E. Withdrawal of Current Interpretive Ruling and Policy Statement

Concurrent with the effective date of the final rule implementing the statutory lien, the NCUA Board withdraws the current IRPS 82–5, 47 FR 57483 (December 27, 1982).

III. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (primarily those under $1 million in assets). The final rule on the statutory lien would reduce existing regulatory burdens. Therefore, the NCUA Board has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The final rule has no information collection requirements. Therefore, no Paperwork Reduction Act analysis is required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The final rule does not apply to State-chartered credit unions and, thus, would not effect State interests. Therefore, no analysis is required.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Insurance, Liens, Mortgages, Reporting and recordkeeping requirements, Surety bonds, Statutory liens

By the National Credit Union Administration Board on October 6, 1999.

Becky Baker,

Secretary of the Board.

Accordingly, 12 CFR chapter VII is amended as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601–3610. Section 701.35 is also authorized by 42 U.S.C 4311–4312.

2. Part 701 is amended to add § 701.39, which reads as follows:

§ 701.39 Statutory lien.

(a) *Definitions.* Within this section, each of the following terms has the meaning prescribed below:

(1) *Except as otherwise provided by law* or *except as otherwise provided by federal law* is a qualifying phrase referring to a federal and/or state law, as the case may be, which supersedes a requirement of this section. It is the responsibility of the credit union to ascertain whether such statutory or case law exists and is applicable;

(2) *Impress* means to attach to a member's account and is the act which makes the lien enforceable against that account;

(3) *Member* means any member who is primarily, secondarily or otherwise responsible for an outstanding financial obligation to the credit union, including without limitation an obligor, maker, co-maker, guarantor, co-signer, endorser, surety or accommodation party;

(4) *Notice* means written notice to a member disclosing, in plain language, that the credit union has the right to impress and enforce a statutory lien against the member's shares and dividends in the event of failure to satisfy a financial obligation, and may enforce the right without further notice to the member. Such notice must be given at the time, or at any time before,

[7] Default as a prerequisite for enforcement distinguishes a statutory lien from a loan secured by the member's pledge of his or her shares (commonly known as a ''share secured loan''). Until a statutory lien is enforced following a member's default, the member is permitted to make withdrawals from the impressed account(s) even to a level below that of the outstanding obligation. In the case of a share secured loan, however, the member never can make withdrawals below the level of the outstanding obligation.

the member incurs the financial obligation;

(5) *Statutory lien* means the right granted by section 107(11) of the Federal Credit Union Act, 12 U.S.C. 1757(11), to a federal credit union to establish a right in or claim to a member's shares and dividends equal to the amount of that member's outstanding financial obligation to the credit union, as that amount varies from time to time.

(b) *Superior claim*. Except as otherwise provided by law, a statutory lien gives the federal credit union priority over other creditors when claims are asserted against a member's account(s).

(c) *Impressing a statutory lien*. Except as otherwise provided by federal law, a credit union can impress a statutory lien on a member's account(s)—

(1) *Account records*. By giving notice thereof in the member's account agreement(s) or other account opening documentation; or

(2) *Loan documents*. In the case of a loan, by giving notice thereof in a loan document signed or otherwise acknowledged by the member(s); or

(3) *By-Law or policy*. Through a duly adopted credit union by-law or policy of the board of directors, of which the member is given notice.

(d) *Enforcing a statutory lien*. (1) *Application of funds*. Except as otherwise provided by federal law, a federal credit union may enforce its statutory lien against a member's account(s) by debiting funds in the account and applying them to the extent of any of the member's outstanding financial obligations to the credit union.

(2) *Default required*. A federal credit union may enforce its statutory lien against a member's account(s) only when the member fails to satisfy an outstanding financial obligation due and payable to the credit union.

(3) *Neither judgment nor set-off required*. A federal credit union need not obtain a court judgment on the member's debt, nor exercise the equitable right of set-off, prior to enforcing its statutory lien against the member's account.

[FR Doc. 99–26755 Filed 10–21–99; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–19–AD; Amendment 39–11381; AD 99–22–03]

RIN 2120–AA64

Airworthiness Directives; British Aerospace BAe Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace BAe Model ATP airplanes, that requires repetitive inspections to detect chafing on the fuel manifold drain hose and the adjacent access panel; and corrective actions, if necessary; and installation of a protective spiral wrap on the fuel manifold drain hose. This amendment also provides for an optional terminating action for the repetitive inspections. This amendment is prompted by reports of chafing between the fuel manifold drain hose and the access panel due to contact between the two components over time. The actions specified by this AD are intended to prevent chafing within the engine nacelle, which could result in flammable fluid leaking into a zone that contains ignition sources.

DATES: Effective November 26, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 26, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace BAe Model ATP airplanes was published in the **Federal Register** on August 23, 1999 (64 FR 45925). That action proposed to require repetitive inspections to detect chafing on the fuel manifold drain hose and the adjacent access panel; and corrective actions, if necessary; and installation of a protective spiral wrap on the fuel manifold drain hose. That action also provides for an optional terminating action for the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Correction of Address

The FAA has been informed that the title of the location where service information may be obtained has changed. The FAA has made this change in the final rule.

Conclusion

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

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD.

It will take approximately 2 work hours per airplane to accomplish the required inspection on the fuel manifold drain hose and access panel, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $1,200, or $120 per airplane, per inspection cycle.

It will take approximately 1 work hour per airplane to accomplish the required installation of the spiral wrap on the fuel manifold drain hose, at an average labor rate of $60 per work hour. Required parts will cost approximately $10 per airplane. Based on these figures, the cost impact of the inspections required by this AD on U.S. operators is estimated to be $700, or $70 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of

the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating option rather than continue the repetitive inspections, it will take approximately 7 work hours per airplane to accomplish the optional terminating action, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,600 (pre-modification 35215A) or $2,400 (post-modification 35215A) per airplane. Based on these figures, the cost impact of this optional terminating action is estimated to be $2,020 (pre-modification 35215A) or $2,820 (post-modification 35215A) per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

99–22–03 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Amendment 39–11381. Docket 99–NM–19–AD.

Applicability: BAe Model ATP airplanes, except those airplanes on which British Aerospace Modification 10455A or 10455B (reference British Aerospace Service Bulletin ATP–71–15, dated December 11, 1998) has been accomplished, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing within the engine nacelle, which could result in flammable fluid leaking into a zone that contains ignition sources, accomplish the following:

Repetitive Inspections and Corrective Actions

(a) Prior to the accumulation of 3,000 total flight hours, or within 1 month after the effective date of this AD, whichever occurs later, perform the actions required in paragraphs (a)(1), (a)(2), and (a)(3) of this AD in accordance with British Aerospace Alert Service Bulletin ATP–A71–14, dated November 4, 1998. Thereafter, repeat the inspections required by paragraphs (a)(1) and (a)(2) of this AD at intervals not to exceed 1,500 flight hours, until accomplishment of the actions specified in paragraph (b) of this AD.

(1) Perform an inspection of the access panel, part number (P/N) JD713J0037–000, to detect chafe damage. If any chafe damage is detected, repair the access panel in accordance with the service bulletin at the time specified in paragraph (a)(1)(i), (a)(1)(ii), or (a)(1)(iii), of this AD, as applicable.

(i) If the damage has reduced the skin thickness by 10 percent or less: Repair within 600 flight hours.

(ii) If the damage has reduced the thickness of the skin by more than 10 percent, but less than 20 percent: Repair within 100 flight hours.

(iii) If the damage has reduced the thickness of the skin by more than 20 percent: Repair prior to further flight.

(2) Perform an inspection of the fuel manifold drain hose, P/N JD007J0983–000 (C37351), to detect chafe damage. If any chafe damage is detected, either replace the fuel manifold drain hose with a new fuel manifold drain hose, P/N JD007J0983–000, in accordance with the service bulletin at the time specified in paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) of this AD, as applicable; or accomplish the replacement specified in paragraph (b) of this AD. Replacement of the fuel manifold drain in accordance with paragraph (b) of this AD constitutes terminating action for the repetitive inspections required by this AD.

(i) If there are signs of worn or polished strands in the outer braid, but no strand is broken: Replace within 1,500 flight hours.

(ii) If five or less strands are broken: Replace within 300 flight hours.

(iii) If more than five strands are broken or any sign of fuel leakage exists: Replace prior to further flight.

(3) Install a protective spiral binding, P/N EFWRAP–125, on the fuel manifold drain hose.

Optional Terminating Action

(b) Replacement of the fuel manifold drain hose, P/N JD007J0983–000 (C37351), with a new, improved drain hose, P/N JD007J2377–000 (C44311), in accordance with British Aerospace Service Bulletin ATP–71–15, dated December 11, 1998, constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(e) The actions shall be done in accordance with British Aerospace Alert Service Bulletin ATP–A71–14, dated November 4, 1998; or British Aerospace Service Bulletin ATP–71–15, dated December 11, 1998, as applicable. 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 British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton,

Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 26, 1999.

Issued in Renton, Washington, on October 14, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–27328 Filed 10–21–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–32–AD; Amendment 39–11382; AD 99–22–04]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes, that requires modification of the wiring of the emergency lighting system. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent the pilots from having full authority over the cabin emergency lights, which could result in delayed egress of the passengers and crew from the cabin during emergency evacuation.

DATES: Effective November 26, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 26, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Airplane Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Airplane Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Luciano L. Castracane, Aerospace Engineer, Systems and Flight Branch, ANE–172, Engine and Propeller Directorate, New York Airplane Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581, telephone (516) 256–7535; fax (516) 256–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes was published in the **Federal Register** on August 20, 1999 (64 FR 45474). That action proposed to require modification of the wiring of the emergency lighting system.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per airplane to accomplish the required modification, and that the average labor rate is $60 per work hour. Required parts will cost approximately $595 per airplane. Based on these figures, the cost impact of the required modification of this AD on U.S. operators is estimated to be $17,950, or $1,795 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

99–22–04 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–11382. Docket 99–NM–32–AD.

Applicability: Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes; serial numbers 459 through 501, excluding serial numbers 462, 464, 467, 469, 478, 479, 481, 482, 487, 489, 490, 491, 493, 495, 498, 499, and 500; 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 (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the pilots from having full authority over the cabin emergency lights, which could result in delayed egress of the passengers and crew from the cabin during an emergency evacuation, accomplish the following:

Modification

(a) For airplanes on which Bombardier Modification 8/2407 has been installed during production: Within 12 months after the effective date of this AD, modify the wiring of the emergency lighting system in accordance with Bombardier Service Bulletin S.B. 8–33–40, Revision ''B,'' dated October 21, 1998.

Note 2: Modification of the wiring of the emergency lighting system accomplished prior to the effective date of this AD in accordance with Bombardier Service Bulletin S.B. 8–33–40, dated May 8, 1998, or Revision ''A,'' dated July 28, 1998, is considered acceptable for compliance with the modification required by paragraph (a) of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(d) The modification shall be done in accordance with Bombardier Service Bulletin S.B. 8–33–40, Revision ''B,'' dated October 21, 1998. 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 Bombardier, Inc., Bombardier Regional Airplane Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Airplane Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–98–33, dated September 8, 1998.

(e) This amendment becomes effective on November 26, 1999.

Issued in Renton, Washington, on October 14, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–27327 Filed 10–21–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–52–AD; Amendment 39–11383; AD 99–22–05]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Short Brothers Model SD3–60 series airplanes, that requires repetitive inspections of the elevator trim control cables for signs of wear damage or broken wires; replacement of damaged or broken cables with certain new cables; and replacement of all 7×7 cables with 7×19 cables. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the elevator trim cable due to fatigue cracking, which if not corrected, could result in reduced controllability of the airplane.

DATES: Effective November 26, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 26, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Short Brothers Model SD3–60 series airplanes was published in the **Federal Register** on August 4, 1999 (64 FR 42291). That action proposed to require repetitive inspections of the elevator trim control cables for signs of wear damage or broken wires; replacement of damaged or broken cables with certain new cables; and replacement of all 7×7 cables with 7×19 cables.

Comment Received

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

Request To Review Inspection Interval

One commenter requests that the proposed AD be revised to either delete the requirement to repetitively inspect to detect wear damage or broken wires of the elevator trim cables at intervals of 12 months, or extend the intervals to 24 months. (The proposed AD currently requires repetitive inspections at intervals not to exceed ''12 months or 2,400 flight hours, whichever occurs first''). The commenter states that the cause of the cable degradation is the repeated operation/movement of the cables over small radius pulleys, which is a factor of flights and flight hours, not calendar time. The commenter also notes that the 2,400 flight hour interval does not correlate with 12 months for these airplanes, since most are operated at significantly less than 2,400 flight hours per year. The commenter also states that the current SD3–60 maintenance program does not specify inspection of the elevator trim cables at 12 months, and does not contain any inspection with a 12-month interval where numerous units are to be removed, as would be required in order to inspect the elevator trim cable circuit. The commenter states that Shorts Service Bulletin SD360–27–27, Revision 1, dated April 1, 1999, is in error in referencing Revision 8 of the maintenance program as containing such inspection intervals.

The FAA does not concur with the request to delete or revise the requirement for inspections at 12-month intervals. Service history has shown these cables to be susceptible to

breakage earlier than anticipated. After several incidents in which segments of the elevator trim cable severed in flight, more frequent inspections of the cables have been deemed necessary in order to preclude such in-flight events.

Additionally, the inspection intervals in the proposed AD were intended to parallel normally scheduled maintenance for the majority of affected operators. Shorts Information Letter SD360–IL–199, Revision 1, dated April 1999, states that a review of the current maintenance program inspection intervals has resulted in the proposal to reduce this inspection interval from a ''D-Check'', which is equivalent to 4,800 flight hours or 2 years, to a ''C-Check'' interval, which is equivalent to the 2,400 flight hour or 12-month interval required by this AD. However, under the provisions of paragraph (c) of the AD, the FAA may approve an operator's request for adjustment of the compliance time intervals if data are provided to substantiate that such an adjustment would constitute an acceptable level of safety. The FAA has determined that the requirement for inspections at the intervals specified in this AD is appropriate to address the identified unsafe condition. No change is made to the final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 45 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per airplane to accomplish the required cable inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $54,000, or $1,200 per airplane, per inspection cycle.

The FAA estimates that it will take approximately 75 work hours per airplane to accomplish the required cable replacement, and that the average labor is $60 per work hour. Required parts will cost approximately $4,500 per airplane. Based on these figures, the cost impact of the cable replacement required by this AD on U.S. operators is estimated to be $405,000, or $9,000 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

99–22–05 Short Brothers, PLC: Amendment 39–11383. Docket 99–NM–52–AD.

Applicability: All Model SD3–60 series airplanes, 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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the elevator trim cable due to fatigue, which if not corrected, could result in reduced controllability of the airplane, accomplish the following:

Inspection

(a) Within 12 months after the effective date of this AD, perform a visual inspection to detect wear damage or broken wires of the elevator trim cables, in accordance with Shorts Service Bulletin SD360–27–27, Revision 1, dated April 1, 1999.

(1) If no wear damage or broken wire is detected, repeat the inspection specified in paragraph (a) of this AD thereafter at intervals not to exceed 12 months or 2,400 flight hours, whichever occurs first.

(2) If any wear damage or broken wire is detected, prior to further flight, replace the damaged cable with a 7×19 cable in accordance with the service bulletin. Repeat the inspection specified in paragraph (a) of this AD thereafter at intervals not to exceed 12 months or 2,400 flight hours, whichever occurs first.

Replacement and Inspection

(b) Prior to the accumulation of 10,000 total flight hours, or within 12 months after the effective date of this AD, whichever occurs later, replace all 7×7 elevator trim cables with 7×19 cables in accordance with Shorts Service Bulletin SD360–27–27, Revision 1, dated April 1, 1999. Repeat the inspection specified in paragraph (a) of this AD thereafter at intervals not to exceed 12 months or 2,400 flight hours, whichever occurs first.

Alternative Methods of Compliance

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(e) The actions shall be done in accordance with Shorts Service Bulletin SD360–27–27, Revision 1, dated April 1, 1999. 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 Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 016–11–98.

(f) This amendment becomes effective on November 26, 1999.

Issued in Renton, Washington, on October 14, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–27326 Filed 10–21–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–117–AD; Amendment 39–11384; AD 99–22–06]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA), Model CN–235 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all CASA Model CN–235 series airplanes, that currently requires repetitive eddy current inspections to detect fatigue cracks in the nose landing gear (NLG) turning tube, and replacement of cracked tubes. This amendment adds a requirement for the replacement of the existing NLG turning tube constructed of aluminum alloy with a new NLG turning tube made of steel; such replacement terminates the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent fatigue cracking and failure of the NLG turning tube, which could result in reduced structural integrity of the NLG.

DATES: Effective November 26, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 26, 1999.

The incorporation by reference of CASA Maintenance Instructions COM 235–092, Revision 02, dated May 5, 1995, listed in the regulations was approved previously by the Director of the Federal Register as of March 4, 1997 (62 FR 3994, January 28, 1997).

ADDRESSES: The service information referenced in this AD may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 97–02–17, amendment 39–9902 (62 FR 3994, January 28, 1997), which is applicable to all CASA Model CN–235 series airplanes, was published in the **Federal Register** on August 12, 1999 (64 FR 43953). The action proposed to supersede AD 97–02–17, to continue to require repetitive eddy current inspections to detect fatigue cracks in the nose landing gear (NLG) turning tube, and replacement of cracked tubes. The action proposed to add a requirement to replace the existing NLG turning tube constructed of aluminum alloy with a new NLG turning tube made of steel, which would terminate the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 2 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 97–02–17, and retained in this AD, take approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $480 per airplane.

The new actions that are required by this AD action will take approximately 16 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $20,722 per airplane. Based on these figures, the cost impact of the actions required by this AD on U.S. operators is estimated to be $43,364, or $21,682 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the

Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9902 (62 FR 3994, January 28, 1997), and by adding a new airworthiness directive (AD), amendment 39–11384, to read as follows:

99–22–06 Construcciones Aeronauticas, S.A. (CASA): Amendment 39–11384. Docket 99–NM–117–AD. Supersedes AD 97–02–17, Amendment 39–9902.

Applicability: All Model CN–235 series airplanes; including Model CN–235 series airplane, serial number C–011; 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, unless accomplished previously.

To prevent fatigue cracking and failure of the nose landing gear (NLG) turning tube, which could result in reduced structural integrity of the NLG, accomplish the following:

Restatement of Requirements of AD 97–02–17, Amendment 39–9902

(a) At the applicable time specified in either paragraph (a)(1) or (a)(2) of this AD, conduct a high frequency eddy current (HFEC) inspection to detect fatigue cracking in the NLG turning tube, in accordance with the procedures specified in Annex 1 and Annex 2 of CASA Maintenance Instructions COM 235–092, Revision 02, dated May 5, 1995.

(1) For Model CN–235 airplanes [Basic model; Maximum Takeoff Weight (MTOW) = 31,746 lbs. (14,400 kgs.)]: Conduct the inspection prior to or upon the accumulation of 6,000 landings on the NLG turning tube, or within 50 landings after March 4, 1997 (the effective date of AD 97–02–17, amendment 39–9902), whichever occurs later.

(2) For Model CN–235–100 series airplanes [MTOW = 33,290 lbs. (15,100 kgs.)] and Model CN–235–200 series airplanes [MTOW = 34,833 lbs. (15,800 kgs)]: Conduct the inspection prior to or upon the accumulation of 4,800 landings on the NLG turning tube, or within 50 landings after March 4, 1997, whichever occurs later.

(b) If no cracking is detected during the inspection required by paragraph (a) of this AD, repeat the inspection thereafter at intervals not to exceed 200 landings until the requirements of paragraph (d) are accomplished.

(c) If any cracking is detected during any inspection required by paragraph (a) or (b) of this AD, prior to further flight, accomplish the actions required by paragraph (c)(1) or (c)(2) of this AD. After the effective date of this AD, only the actions specified by paragraph (c)(2) of this AD shall be accomplished.

(1) Replace the NLG turning tube with a new unit in accordance with CASA Maintenance Instructions COM 235–092, Revision 02, dated May 5, 1995. After replacement, repeat the HFEC inspection prior to or upon the accumulation of 6,000 landings on the new NLG turning tube installed on Model CN–325 airplanes (basic model); or prior to or upon the accumulation of 4,800 landings on the new NLG turning tube installed on Model CN–325–100 and –200 series airplanes. Thereafter, repeat the inspection at intervals not to exceed 200 landings.

(2) Remove the NLG turning tube, P/N GA 63433, from the NLG yoke assembly and install a new turning tube, P/N GA 65924, and identify the modified NLG with a P/N SB–A0002–0101 data plate with the service bulletin number inscribed, in accordance with CASA Service Bulletin 35–CSB–32–001, dated February 16, 1999.

New Requirements of this AD

(d) Remove the NLG turning tube, P/N GA 63433, from the NLG yoke assembly and install a new turning tube, P/N GA 65924, and identify the modified NLG with a P/N SB–A0002–0101 data plate with the service bulletin number inscribed, in accordance with CASA Service Bulletin 35–CSB–32–001, dated February 16, 1999. Except as provided by paragraph (c)(2) of this AD, accomplish the actions at the later of the times specified in paragraphs (d)(1) and (d)(2) of this AD. Accomplishment of these actions constitutes terminating action for the requirements of this AD.

(1) Prior to the accumulation of 4,800 total flight cycles; or

(2) Within 1 year or 200 landings after the effective date of this AD, whichever occurs first.

(e) As of the effective date of this AD, no person shall install a NLG turning tube, P/N GA 63433, on any airplane.

Alternative Methods of Compliance

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(h) The actions shall be done in accordance with CASA Maintenance Instructions COM 235–092, Revision 02, dated May 5, 1995; or CASA Service Bulletin 35–CSB–32–001, dated February 16, 1999; as applicable.

(1) The incorporation by reference of CASA Service Bulletin 35–CSB–32–001, dated February 16, 1999, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation of reference of CASA Maintenance Instructions COM 235–092, Revision 02, dated May 5, 1995, was approved previously by the Director of the Federal Register as of March 4, 1997 (62 FR 3994, January 28, 1997).

(3) Copies may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Spanish airworthiness directive 01/95, Rev. 2, dated February 15, 1999.

(i) This amendment becomes effective on November 26, 1999.

Issued in Renton, Washington, on October 14, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–27325 Filed 10–21–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–181–AD; Amendment 39–11385; AD 99–22–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes, that

requires a one-time inspection of the rail release pins and parachute pins of the escape slide/raft pack assembly for correct installation, and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent improper deployment of the escape slide/raft and blockage of the door in the event of an emergency evacuation.

DATES: Effective November 26, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 26, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A330 and A340 series airplanes was published in the **Federal Register** on August 20, 1999 (64 FR 45487). That action proposed to require a one-time inspection of the rail release pins and parachute pins of the escape slide/raft pack assembly for correct installation, and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it will require approximately 7 work hours to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD will be $420 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

99–22–07 Airbus Industrie: Amendment 39–11385. Docket 99–NM–181–AD.

Applicability: Model A330 series airplanes, certificated in any category, serial numbers 12 through 223 inclusive, except serial numbers 181, 195, 209, and 222; and Model A340 series airplanes, certificated in any category, serial numbers 2 through 233 inclusive, except serial number 204.

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 (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent improper deployment of the escape slide/raft and blockage of the door in the event of an emergency evacuation, accomplish the following:

Inspection

(a) Within 2,000 flight hours or 6 months after the effective date of this AD, whichever occurs later: Perform a one-time detailed visual inspection of the rail release pins and parachute pins of the escape slide/raft pack assembly installed on all passenger/crew doors (type A) and emergency exit doors (type A or type 1) for correct installation, in accordance with Airbus Industrie Service Bulletin A330–25–3086 (for Model A330 series airplanes) or A340–25–4115 (for Model A340 series airplanes), both Revision 01, both dated June 11, 1999.

(1) During the inspection performed in accordance with paragraph (a) of this AD, if a rail release pin of the escape slide/raft pack assembly is found to be missing or incorrectly installed: Prior to further flight, re-install the rail release pin into the release rail, or, if re-installation is not possible,

remove the discrepant escape slide/raft pack assembly and replace with a new pack assembly of the same part number; in accordance with the applicable service bulletin.

(2) During the inspection performed in accordance with paragraph (a) of this AD, if a parachute pin of the escape slide/raft pack assembly is found to be missing or incorrectly installed: Prior to further flight, remove the discrepant escape slide/raft pack assembly and replace with a new pack assembly of the same part number; in accordance with the applicable service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An extensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required.''

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with Airbus Industrie Service Bulletin A330–25–3086, including Appendix 01, Revision 01, dated June 11, 1999; or Airbus Industrie Service Bulletin A340–25–4115, including Appendix 01, Revision 01, dated June 11, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directives 1999–178–086(B) (for Model A330 series airplanes) and 1999–179–107(B) (for Model A340 series airplanes), both dated May 5, 1999.

(e) This amendment becomes effective on November 26, 1999.

Issued in Renton, Washington, on October 14, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–27324 Filed 10–21–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 187

[CGD 89–050]

RIN 2115–AD35

Vessel Identification System

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard removes its Guidelines for State Vessel Titling Systems. These guidelines, though in the Code of Federal Regulations since 1995, were never made effective. We now plan to issue a separate document proposing to substantially change them. Therefore, it is not in the public interest to continue delaying their effective date.

DATES: This rule is effective October 22, 1999.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket CGD 89–050 and are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, contact ENS Christopher Williammee, Office of Information Resources, Coast Guard, telephone 202–267–6989, electronic mail Cwilliammee@comdt.uscg.mil.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 25, 1995, we published an interim final rule in the **Federal Register** (60 FR 20310) establishing a vessel identification system and prescribing guidelines for State vessel titling systems. The rule went into effect on April 24, 1996, with the exception of Subpart D, Guidelines for State Vessel Titling Systems. On February 23, 1996, we published an interim final rule (61 FR 6943) delaying the effective date of Subpart D until April 23, 1998, to allow the Coast Guard, States, and public more time to review the complexities of the standards relating to State titling. On April 21, 1998, we published another interim final rule (63 FR 19657), which delayed the effective date of Subpart D until April 24, 1999. Then, on April 19, 1999, we published a fourth interim final rule (64 FR 19039) once again delaying the effective date of Subpart D until October 24, 1999.

These guidelines, though in the Code of Federal Regulations since 1995, were never made effective. We now plan to issue a separate document in January 2000 proposing to substantially change them. Because of this, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**.

Discussion

We have delayed the effective date of Subpart D three times since its original publication in an interim final rule in the **Federal Register** (60 FR 20310) on April 25, 1995. From comments received from April 25, 1995, through December 4, 1997, we have begun drafting a Supplemental Notice of Proposed Rulemaking (SNPRM) to propose substantial changes to 33 CFR part 187. Subpart D is undergoing extensive revisions for the SNPRM, based on comments received from the States, the marine lending industry, and maritime law interests. Since we are currently revising Subpart D substantially and have no intention of allowing it to become effective as written, we are removing and reserving the subpart rather than continuing to delay its effective date. Therefore, to prevent the current subpart from becoming effective on October 24, 1999, this Final Rule removes and reserves Subpart D. We will publish the SNPRM in November 1999 and will, at that time, invite comments on all of the proposed changes to Subpart D.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule (with or without Guidelines for State Vessel Titling Systems) to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. With or without the Guidelines, the expected cost is considerably less than $100 million. Therefore, the rule is not significant and does not require a full Regulatory Evaluation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rulemaking affects U.S. States. It imposes zero mandatory costs. According to the U.S. Bureau of the Census, none of the States eligible to participate in VIS has a population less than 50,000. Therefore, we conclude there are no small entities affected and no impact upon small entities.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under E.O. 12612 and have determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act and Enhancing the Intergovernmental Partnership

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093, October 28, 1993) govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This rule removes delayed guidelines for State vessel titling systems. This action clearly would have no environmental consequences. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 187

Administrative practice and procedure, Marine safety, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 187 as follows:

PART 187—VESSEL IDENTIFICATION SYSTEM

1. The authority citation for part 187 continues to read as follows:

Authority: 46 U.S.C. 2103; 49 CFR 1.46.

§§ 187.301—187.331 Subpart D—[Removed and Reserved]

2. Remove and reserve subpart D, consisting of § 187.301 through § 187.331.

Dated: October 18, 1999.

Jeffrey P. High,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–27660 Filed 10–21–99; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6462–1]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds 10 new sites to the NPL: 9 sites to the General Superfund Section of the NPL and one site to the Federal Facilities Section of the NPL.

EFFECTIVE DATE: The effective date for this amendment to the NCP shall be November 22, 1999.

ADDRESSES: For addresses for the Headquarters and Regional docket, as well as further details on what these dockets contain, see Section II, ''Availability of Information to the Public'' in the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center, Office of Emergency and Remedial Response (mail code 5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
  A. What are CERCLA and SARA?
  B. What is the NCP?
  C. What is the National Priorities List (NPL)?
  D. How are Sites Listed on the NPL?

E. What Happens to Sites on the NPL?
F. How are Site Boundaries Defined?
G. How are Sites Removed from the NPL?
H. Can Portions of Sites be Deleted from the NPL as They Are Cleaned Up?
I. What is the Construction Completion List (CCL)?
II. Availability of Information to the Public
A. Can I Review the Documents Relevant to this Final Rule?
B. What Documents are Available for Review at the Headquarters Docket?
C. What Documents are Available for Review at the Regional Docket?
D. How Do I Access the Documents?
E. How Can I Obtain a Current List of NPL Sites?
III. Contents of This Final Rule
A. Additions to the NPL
B. Status of NPL
C. What Did EPA Do With the Public Comments It Received?
IV. Executive Order 12866
A. What is Executive Order 12866?
B. Is this Final Rule Subject to Executive Order 12866 Review?
V. Unfunded Mandates
A. What is the Unfunded Mandates Reform Act (UMRA)?
B. Does UMRA Apply to This Final Rule?
VI. Effect on Small Businesses
A. What is the Regulatory Flexibility Act?
B. Does the Regulatory Flexibility Act Apply to this Final Rule?
VII. Possible Changes to the Effective Date of the Rule
A. Has This Rule Been Submitted to Congress and the General Accounting Office?
B. Could the Effective Date of This Final Rule Change?
C. What Could Cause the Effective Date of This Rule to Change?
VIII. National Technology Transfer and Advancement Act
A. What is the National Technology Transfer and Advancement Act?
B. Does the National Technology Transfer and Advancement Act Apply to this Final Rule?
IX. Executive Order 12898
A. What is Executive Order 12898?
B. Does Executive Order 12898 Apply to This Final Rule?
X. Executive Order 13045
A. What is Executive Order 13045?
B. Does Executive Order 13045 Apply to This Final Rule?
XI. Paperwork Reduction Act
A. What is the Paperwork Reduction Act?
B. Does the Paperwork Reduction Act Apply to This Final Rule?
XII. Executive Orders on Federalism
What Are The Executive Orders on Federalism and Are They Applicable to This Final Rule?
XIII. Executive Order 13084
What is Executive Order 13084 and is it Applicable to this Final Rule?

I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action.'' (''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases 42 U.S.C. 9601(23).)

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends

dissociation of individuals from the release.

- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on September 17, 1999 (64 FR 50459).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions ***.'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance release has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which that contamination has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site properly understood is not limited to that property (*e.g.*, it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.*, where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the name ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the problem presented by the release'' will be determined by a remedial investigation/feasibility study (RI/FS) as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

As of October 12, 1999, the Agency has deleted 201 sites from the NPL.

H. Can Portions of Sites be Deleted From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of October 12, 1999, EPA has deleted portions of 16 sites.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for deletion from the NPL.

Of the 201 sites that have been deleted from the NPL, 192 sites were deleted because they have been cleaned up (the other 9 sites were deleted based on deferral to other authorities and are not considered cleaned up). As of October 12, 1999, there are a total of 670 sites on the CCL. This total includes the

192 deleted sites. For the most up-to-date information on the CCL, see EPA's Internet site at http://www.epa.gov/superfund.

II. Availability of Information to the Public

A. Can I Review the Documents Relevant to This Final Rule?

Yes, documents relating to the evaluation and scoring of the site in this final rule are contained in dockets located both at EPA Headquarters and in the Regional offices.

B. What Documents Are Available for Review at the Headquarters Docket?

The Headquarters docket for this rule contains HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or EPA listing policies that affect the site, and a list of documents referenced in the Documentation Record. The Headquarters docket also contains comments received, and the Agency's responses to those comments. The Agency's responses are contained in the ''Support Document for the Revised National Priorities List Final Rule—October 1999.''

C. What Documents Are Available for Review at the Regional Dockets?

The Regional dockets contain all the information in the Headquarters docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the site. These reference documents are available only in the Regional dockets.

D. How Do I Access the Documents?

You may view the documents, by appointment only, after the publication of this document. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA, 703/603–8917.

The contact information for the Regional dockets is as follows:

Barbara Callahan, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Records Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1356.

Ben Conetta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4435.

Dawn Shellenberger (GCI), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

Joellen O'Neill, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, 9th floor, Atlanta, GA 30303; 404/562–8127.

Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Waste Management Division 7-J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–7570.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF-RA, Dallas, TX 75202–2733; 214/665–7436.

Carole Long, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551–7224.

David Williams, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR-SA, Denver, CO 80202–2466; 303/312–6757.

Carolyn Douglas, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/744–2343.

David Bennett, Region 10 (AK, ID, OR, WA), U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop ECL–115, Seattle, WA 98101; 206/553–2103.

E. How Can I Obtain a Current List of NPL Sites?

You may obtain a current list of NPL sites via the Internet at http://www.epa.gov/superfund/ (look under site information category) or by contacting the Superfund Docket (see contact information above).

III. Contents of This Final Rule

A. Additions to the NPL

This final rule adds 10 sites to the NPL; 9 sites to the General Superfund Section of the NPL and one site to the Federal Facilities Section of the NPL. Table 1 presents the 9 sites in the General Superfund Section and Table 2 contains the one site in the Federal Facilities Section. Sites in each table are arranged alphabetically by State.

TABLE 1.—NATIONAL PRIORITIES LIST FINAL RULE, GENERAL SUPERFUND SECTION

State	Site name	City/county
MT	Basin Mining Area	Basin.
MT	Upper Tenmile Creek Mining Area	Lewis and Clark.
NC	Georgia-Pacific Corporation Hardwood Sawmill	Plymouth.
NJ	Iceland Coin Laundry Area Ground Water Plume	Vineland.
NJ	Lightman Drum Company	Winslow Township.
NM	Fruit Avenue Plume	Albuquerque.
TX	Garland Creosoting	Longview.
TX	State Road 114 Ground Water Plume	Levelland.
WV	Vienna Tetrachloroethene	Vienna.

Number of Sites Added to the General Superfund Section: 9.

TABLE 2.—NATIONAL PRIORITIES LIST FINAL RULE, FEDERAL FACILITIES SECTION

State	Site name	City/county
NJ	McGuire Air Force Base #1	Wrightstown.

Number of Sites Added to the Federal Facilities Section: 1.

B. Status of NPL

With the 10 new sites added to the NPL in today's final rule; the NPL now contains 1,221 final sites; 1,062 in the General Superfund Section and 159 in the Federal Facilities Section. With a separate rule (published elsewhere in today's **Federal Register**) proposing to add 9 new sites to the NPL, there are now 57 sites proposed and awaiting final agency action, 52 in the General Superfund Section and 5 in the Federal Facilities Section. Final and proposed sites now total 1,278. (These numbers reflect the status of sites as of October 12, 1999. Sites deletions may affect these numbers at time of publication in the **Federal Register**.)

C. What Did EPA Do With the Public Comments It Received?

EPA reviewed all comments received on the sites in this rule. The following sites were proposed on July 22, 1999 (64 FR 39886): Basin Mining Area, Upper Tenmile Creek Mining Area, Lightman Drum Company, Iceland Coin Laundry Area Ground Water Plume, Fruit Avenue Plume, Garland Creosoting, State Road 114 Ground Water Plume, and McGuire Air Force Base #1. The Vienna Tetrachloroethene site was proposed on April 23, 1999 (64 FR 19968). The Georgia-Pacific Corporation Hardwood Sawmill site was proposed on January 19, 1999 (64 FR 2942).

For the State Road 114 Ground Water Plume, Basin Mining Area, and Upper Tenmile Creek Mining Area sites, EPA received only comments in favor of placing the sites on the NPL. EPA received no comments on the actual scoring of these sites and the Agency has identified no other reason to change the original HRS scores for the sites. Therefore, EPA is placing these sites on the final NPL at this time.

No comments affecting the HRS scoring were received on several sites (Lightman Drum Company, Iceland Coin Laundry Area Ground Water Plume, Fruit Avenue Plume, Garland Creosoting) and therefore, EPA is placing them on the final NPL at this time.

EPA responded to all relevant comments received on the other sites. EPA's responses to site-specific public comments are addressed in the ''Support Document for the Revised National Priorities List Final Rule—October 1999.''

IV. Executive Order 12866

A. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a 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.

B. Is This Final Rule Subject to Executive Order 12866 Review?

No, the Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

V. Unfunded Mandates

A. What Is the Unfunded Mandates Reform Act (UMRA)?

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 by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a 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. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

B. Does UMRA Apply to This Final Rule?

No, 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 by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses

A. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the

head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

B. Does the Regulatory Flexibility Act Apply to this Final Rule?

No. While this rule revises the NPL, an NPL revision is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the site in this rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of this site to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, this regulation does not require a regulatory flexibility analysis.

VII. Possible Changes to the Effective Date of the Rule

A. Has This Rule Been Submitted to Congress and the General Accounting Office?

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA has 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 United States prior to publication of the rule in the **Federal Register**. A ''major rule'' cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

B. Could the Effective Date of This Final Rule Change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

C. What Could Cause the Effective Date of This Rule to Change?

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, 462 U.S. 919,103 S. Ct. 2764 (1983) and Bd. of Regents of the University of *Washington* v. *EPA*, 86 F.3d 1214,1222 (D.C. Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

VIII. National Technology Transfer and Advancement Act

A. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to

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

B. Does the National Technology Transfer and Advancement Act Apply to This Final Rule?

No. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

IX. Executive Order 12898

A. What is Executive Order 12898?

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

B. Does Executive Order 12898 Apply to this Final Rule?

No. While this rule revises the NPL, no action will result from this rule that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

X. Executive Order 13045

A. What Is Executive Order 13045?

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

B. Does Executive Order 13045 Apply to This Final Rule?

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

XI. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

B. Does the Paperwork Reduction Act Apply to This Final Rule?

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

XII. Executive Orders on Federalism

What Are The Executive Orders on Federalism and Are They Applicable to This Final Rule?

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255 (August 10, 1999),) which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 (52 FR 41685 (October 30, 1987),) on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. This rule will not result in the imposition of any additional requirements on any State, local governments or other political subdivisions within any State. Accordingly, the requirements of section 6(c) of Executive Order 12612 do not apply to this rule.

XIII. Executive Order 13084

What is Executive Order 13084 and Is It Applicable to this Final Rule?

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful

and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

This rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not significantly or uniquely affect their communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: October 15, 1999.

Timothy Fields, Jr.,

Assistant Administrator, Office of Solid Waste and Emergency Response.

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.

2. Table 1 and Table 2 of appendix B to part 300 are amended by adding the following sites in alphabetical order to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes(a)
*	*	*	*
MT	Basin Mining Area	Basin.	
*	*	*	*
MT	Upper Tenmile Creek Mining Area	Lewis and Clark.	
*	*	*	*
NC	Georgia-Pacific Corporation Hardwood Sawmill	Plymouth.	
*	*	*	*
NJ	Iceland Coin Laundry Area Ground Water Plume	Vineland.	
*	*	*	*
NJ	Lightman Drum Company	Winslow Township	
*	*	*	*
NM	Fruit Avenue Plume	Albuquerque.	
*	*	*	*
TX	Garland Creosoting	Longview.	
*	*	*	*
TX	State Road 114 Ground Water Plume	Levelland.	
*	*	*	*
WV	Vienna Tetrachloroethene	Vienna.	
*	*	*	*

(a) A = Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (if scored, HRS score need not be ≤ 28.50).
C = Sites on construction completion list.
S = State top priority (included among the 100 top priority sites regardless of score).
P = Sites with partial deletion(s).

TABLE 2.—FEDERAL FACILITIES SECTION

State	Site name	City/County	Notes(a)
*	*	*	*
NJ	McGuire Air Force Base #1	Wrightstown.	
*	*	*	*

(a) A = Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (if scored, HRS score need not be ≤ 28.50).
C = Sites on construction completion list.
S = State top priority (included among the 100 top priority sites regardless of score).
P = Sites with partial deletion(s).

[FR Doc. 99–27537 Filed 10–21–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket Nos. 98–43 and 94–149, FCC 99–267]

1998 Biennial Regulatory Review—Streamlining of Mass Media Applications, Rules, and Processes

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document addresses thirty-eight petitions for reconsideration. The document grants in part several petitions, clarifies certain rules adopted in the *Report and Order* (hereafter the ''*Streamlining Order*'') in this proceeding, and denies other petitions in whole or in part. Petitioners had not provided grounds for reconsidering or reversing any policies adopted in the *Streamlining Order.* Nevertheless, several petitioners pointed out specific circumstances in which the Commission could exempt permittees from strict compliance with the rules while ensuring that the policy underlying the rule remained intact. It also eliminates the requirement that applications, amendments, and other requests for Commission action contain an original signature, and it revises the criteria for evaluating ''minor change'' applications in the FM broadcasting service. These actions will further the *Streamlining Order's* stated goals of making the Commission's broadcast licensing procedures more efficient and eliminating unwarranted regulatory burdens on Commission broadcast regulatees.

DATES: Effective December 21, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Wagner, (202) 418–2700, Audio Services Division, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order (''*MO&O*''), adopted September 29, 1999; released October 6, 1999. The full text of the Commission's *MO&O* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW–A306), 445 12th Street, SW, Washington D.C 20554. The complete text of this MO&O may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3500, 1231 20th Street, NW, Washington, DC 20036.

Synopsis of Memorandum Opinion and Order

Introduction and Background

1. On November 26, 1998, the Commission released its Report and Order in MM Docket Nos. 98–43 and 94–149, 13 FCC Rcd 23,056 (1998), 63 FR 70039. In the *Streamlining Order,* the Commission significantly modified its broadcast application and licensing procedures to make them more efficient and eliminate unwarranted regulatory burdens. Specifically, in the *Streamlining Order,* the Commission (1) Adopted an electronic filing mandate for key Mass Media Bureau broadcast application and reporting forms, establishing a ''phase-in'' period of six months between the date that the pertinent form becomes available for filing electronically and the date that electronic filing would become mandatory; (2) substantially revised key forms to replace many narrative exhibits with ''yes'' or ''no'' certifications, supplemented with detailed instructions and worksheets; (3) adopted a system of random audits to ensure the integrity of our application process, as well as compliance with the Communications Act and the Commission's Rules, under the streamlined application procedures; (4) extended the construction period for all broadcast stations to three years (from 18 months for radio stations and 24 months for television stations) and provided for automatic forfeiture of the permit if a station is not operational with an application for covering license on file by the end of that period; (5) adopted a formal system by which the construction period would be ''tolled'' in the event that (a) An ''act of God'' interfered with construction efforts, or (b) a permit itself was the subject of administrative or judicial review; (6) eliminated the restriction on payment allowable for the sale of an unbuilt construction permit; (7) eliminated the requirement that broadcast station ownership reports be filed every year on the date of the station's license renewal and substituted a requirement that the report be filed only every two years; and (8) modified the ownership report form to require the provision of information on the racial and gender identity of broadcast licensees/principals.

2. Thirty-eight parties filed petitions for reconsideration of the *Streamlining Order.* The issues raised, and the Commission's resolution of each issue, are summarized below.

Discussion

Worksheets

3. In the *Streamlining Order,* the Commission stated that it would assist applicants in completing the new certification-based forms by providing detailed worksheets and instructions. The Commission also determined that it would not require applicants to retain worksheets, place them in the station public files, or file them with the Commission.

4. In the *MO&O,* the Commission rejected arguments by the Federal Communications Bar Association that the filing and retention of worksheets would constitute a minimal burden on the applicant and would ensure the integrity of the application process. The Commission stated that the worksheets were designed ''to provide guidance'' and that it would be contrary to the purpose of the streamlining proceeding to treat the worksheets as part of the application. Additionally, the Commission stated that the certification requirement, buttressed by the formal audit program and the agency's authority to request additional information from applicants as necessary, will be sufficient to ensure the integrity of the application process.

Contour Maps

5. In the *Streamlining Order,* the Commission required the submission with the application of the coverage contour overlap map upon which the applicant relied in certifying its compliance with the local radio ownership rules. In response to Petitioner David Tillotson, the Commission carved a limited exception to this requirement: when the acquisition will result in same-service overlap of stations licensed to the same community (and no other station outside the community of license is involved), an applicant will be permitted to certify compliance with the local radio ownership rules simply by showing that there are greater than the requisite number of stations licensed to that community.

Enforcement and Audits

6. In the *Streamlining Order,* the Commission adopted a system of random audits to prevent abuse of its licensing process. Pursuant to this system, up to five percent of all broadcast applications would be subject to heightened scrutiny prior to grant, typically during the petition to deny period, and subject up to five percent of

all applications to a formal audit after grant.

7. In the *MO&O,* the Commission rejected the contention of petitioner Tillotson that audits must be conducted prior to grant or, in any event, prior to the date on which grant of an application becomes final. According to the petitioner, lending institutions and investors will be reluctant to advance funds based upon a qualified opinion letter from counsel regarding finality disclosing that a granted application may still be subject to an audit. The Commission held that the post-grant audit program does not alter the concept of a grant's ''finality,'' as the agency has the authority under 47 U.S.C. 312(a)(7) to revoke a construction permit or license at any time after grant. The adoption of a post-grant audit program therefore will not make permit grants any less ''final'' than under existing law.

Collection of Information on Minority and Female Ownership

8. In the *Streamlining Order,* the Commission adopted a proposal to revise its Annual Ownership Report, to be submitted on FCC Form 323, to collect race and gender information about the attributable owners of broadcast licenses. In the *MO&O,* the Commission rejected the argument by the National Association of Broadcasters that the requirement imposes a ''significant burden'' on broadcasters and duplicates information already collected by the National Telecommunications and Information Administration (''*NTIA*''). The Commission held that the collection of race and gender data is consistent with its statutory mandate to ''promote the policies and purposes of [the Communications Act] favoring diversity of media voices'' and to promote the public policy of ''disseminating licenses among a wide variety of applicants, including * * * businesses owned by members of minority groups and women.'' Collection of this data will make it easier for the Commission to monitor the success of these policies.

9. Additionally, the Commission held that the requirement will not unduly burden broadcasters, because it will not require broadcasters to obtain information from anyone whose interests are not currently reportable. Finally on this issue, the Commission found that the NTIA's race and gender collection methodology does not include information on women and does not ensure that the NTIA report includes a complete listing of all stations owned by minorities; NTIA data is therefore an inadequate substitute for the data to be collected by the Commission.

Revised Construction Periods

10. In order to reduce the time spent in applicant preparation and staff study of extension applications, the Commission determined in the *Streamlining Order* to: (1) Apply a uniform three-year term to all construction permits; (2) exclude from the calculation of this term those periods during which the permit itself was the subject of administrative or judicial review or where construction delays were caused by an ''act of God,'' *i.e.,* ''toll'' the construction period for these events; (3) eliminate the practice of providing extra time for construction after a permit has been modified or assigned/transferred; and (4) make construction permits subject to automatic forfeiture upon expiration. Petitioners challenged the scope of application of the new rules and the tolling provisions of the new rules.

11. The Commission rejected the challenges and affirmed the *Streamlining Order's* application of the revised construction period rules to all outstanding permits. First, the Commission held that the *Notice of Proposed Rule Making* in this proceeding, 13 FCC Rcd 11,349 (1998), 63 FR 19926 (April 17, 1998), let interested commenters know that their interests were likely to be affected by the proceeding, and it fairly apprised interested parties of the subjects and issues of the rule making. The *Streamlining Order* did not ''reach back'' into past construction periods and change the legal consequences of actions taken those periods. Since permittees or licensees have no proprietary interest in their authorizations, permit forfeiture resulting from application of the rules cannot constitute an unconstitutional government ''taking'' so long as notice requirements were met when the rules were adopted. Nonetheless, the *MO&O* provides relief for a group of permittees holding valid permits on the effective date of the *Streamlining Order,* including permittees whose authorizations have expired but for which the forfeiture is not administratively ''final.'' Specifically, it establishes for those permittees a revised automatic forfeiture date of one year from the effective date of the *MO&O.*

12. Additionally, the Commission held that the ''tolling'' provisions adopted in the *Streamlining Order* strike the proper balance between the fundamental public interest in expediting new broadcast service and the recognition that there are some legitimate obstacles that may prevent construction. By adding one full year to all full-service television broadcast permits and one and one-half years to all other broadcast permits, the Commission has built in a ''cushion'' of additional time sufficient for diligent permittees to complete construction unless faced with insurmountable circumstances.

13. The Commission specifically rejected the contention of several petitioners that local zoning matters should constitute a circumstance beyond the permittee's control such that the ''tolling'' provisions should be invoked; it held that zoning delays often stem from misjudgments by permittees in specifying transmitter sites and that diligent permittees can overcome zoning obstacles given the increased construction period now allotted. It did, however expand the tolling provision to include certain circumstances raised by petitioners, *i.e.*: (1) When there is the failure of a Commission-imposed condition precedent to commencement of operation (such as where a broadcaster ordered to change frequencies to accommodate another has not done so in a timely manner), and (2) in certain limited circumstances involving low power television stations, due to the unique nature of this secondary service and the impact of the transition to digital television on that service.

14. The Commission also clarified the notification procedures to be utilized by permittees seeking to have their construction periods ''tolled.'' Apart from the information required by the *Streamlining Order* for tolling notifications (date/circumstances of the tolling event, station call sign, frequency, community of license, and construction permit application file number), the tolling notification should contain the following information: (1) The grant date and original expiration date of the construction permit; (2) a brief description of the tolling event; (3) a specific reference to § 73.3598 of the Commission's rules, the *Streamlining Order,* or the *MO&O* demonstrating that the circumstances qualify as an approved tolling event; (4) the date(s) during which the tolling impediment prevented construction; and (5) if possible at the time of notification, the permittee's calculation of the revised permit expiration date.

FM Minor Change Tenderability Criteria

15. Prior to the institution of the competitive bidding procedures for broadcast facilities, applications for facilities in the non-reserved FM band

would be acceptable for filing only if they met a two-tiered minimum filing requirement. First, the application had to include six essential elements: (1) The applicant's name and address; (2) the applicant's original signature; (3) the applicant's principal community; (4) the specified channel or frequency; (5) the class of station proposed; and (6) the transmitter site coordinates. Additionally, the applicant could omit no more than three of the ''second tier'' items specified in Appendix C to the *Report and Order* in MM Docket No. 91–347, 7 FCC Rcd 5074 (1992), 57 FR 34,872 (August 7, 1992). In order to facilitate the auction process, the Commission abolished the two-tier system for all full-service FM applications for new facilities and major changes in the *First Report and Order* in MM Docket No. 97–234, GC Docket No. 92–52, and GEN Docket No. 90–264, 13 FCC Rcd 15,920 (1998), 63 FR 48615 (September 30, 1998). Subsequently, in the *Notice of Proposed Rule Making* in this proceeding, the Commission concluded that the rationale underlying the auction-related processing rule change applied only to new and major change applications. However, in light of the revisions to the application forms and processing procedures proposed in the *Notice of Proposed Rule Making,* the Commission invited comment on whether or not it should modify the ''tenderability'' and two-tier standards for minor change FM applications.

16. The Commission received no comments on this issue, and it did not address the matter in the *Streamlining Order.* In the *MO&O,* therefore, the Commission clarified and modified the two-tier review system for FM minor change applications. This action is necessary because many of the ''second tier'' elements have been eliminated as a result of the streamlined application forms. The Commission incorporated the six remaining elements contained in Appendix C to the *Report and Order* in MM Docket No. 91–347 directly into § 73.3564 of its rules. Applicants FM filing minor change applications will be considered to meet the minimum filing requirements if they omit no more than three of the six items. Applicants omitting up to three of the second-tier elements will be sent a deficiency letter by the staff and given one opportunity to correct all tender and acceptance defects; applications omitting more than three of the six will be returned.

Broadcast Application Signature Requirement

17. Section 73.3513 of the Commission's rules specifies who must sign the certification section of the broadcast application or amendment on behalf of various broadcast entities. It also specifies that the applicant's attorney may sign in case of the applicant's disability or absence from the United States. Commission case law consistently has held that the application must bear an original signature; facsimile signatures have been held to be unacceptable. The basis for this policy has been that the original signature requirement provides assurance that the applicant has personally reviewed the application and can be held responsible for the truthfulness and accuracy of the application.

18. In the *MO&O,* the Commission stated that it no longer believed that the original signature requirement is the only reliable means of guaranteeing application review: applicants can be held accountable for false information and representations made in applications irrespective of whether or not the application contains an original signature. The Commission cited 47 CFR 73.1015 (requiring truthful written responses to Commission inquiries); 47 CFR 73.3513(d) (willful false statements in applications will be considered, *inter alia,* a violation of section 73.1015); *see also* 47 CFR 1.52 (facsimile signature of attorney or unrepresented party sufficient for subscription and verification of pleadings). The agency noted that there also may be cases—for example, informal requests for special temporary authorization in emergency situations—where permitting the use of facsimile signatures could expedite Commission action furthering the public interest. Accordingly, the Commission amended § 73.3513 to permit facsimile signatures by the appropriate signatory.

Administrative Matters

Supplemental Final Paperwork Reduction Act of 1995 Analysis

19. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements on the public. Implementation of these new or modified reporting and recordkeeping requirements are subject to approval by the Office of Management and Budget as prescribed by the Act. The new or modified paperwork requirements contained in this *MO&O* which are subject to approval by the Office of Management and Budget will go into effect upon OMB approval.

Regulatory Flexibility Analysis

20. Pursuant to the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601 *et seq.,* the Commission's Supplemental Final Regulatory Flexibility Analysis in this *MO&O* is reprinted below at paragraphs 25–38.

Ordering Clauses

21. Accordingly, *it is ordered* that, That the petitions for reconsideration of the *Streamlining Order* ARE GRANTED IN PART AND DENIED IN PART, and the motions for stay filed by Z-Spanish Media, *et al.* and W. Russell Withers, Jr. IS DISMISSED.

22. *It is further ordered,* That, pursuant to authority in sections 4(i) and (j), 301, 303(f), 303(g), 303(h), 303(j), 303(r), 307(c), 308(b), 319(b), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 301, 303(f), 303(g), 303(h), 303(j), 303(r), 307(c), 308(b), 319(b), and 403, Part 73 of the Commission's Rules IS AMENDED as set forth below.

23. *It is further ordered,* That the rule amendments set forth in Appendix C WILL BECOME EFFECTIVE 60 days after their publication in the **Federal Register**, and the information collection requirements contained in these rules will become effective 60 days after publication in the **Federal Register**, following OMB approval, unless a notice is published in the **Federal Register** stating otherwise.

24. *It is further ordered,* That the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this *Memorandum Opinion and Order,* including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Supplemental Final Regulatory Flexibility Analysis

25. As required by the Regulatory Flexibility Act (''RFA''), 5 U.S.C. 603, a Final Regulatory Flexibility Analysis (''FRFA'') was incorporated in Appendix B of the *Report and Order* in this proceeding.[1] The Commission's Supplemental Final Regulatory Flexibility Analysis (''Supplemental FRFA'') in this *Memorandum Opinion and Order* reflects revised or additional information to that contained in the FRFA. This Supplemental FRFA is thus limited to matters raised in response to the *First Report and Order* that are granted on reconsideration in the *Memorandum Opinion and Order.* This

[1] 13 FCC Rcd 23,056 (1998). Certain abbreviated references used in the Memorandum Opinion and Order are also used in this Appendix.

Supplemental FRFA conforms to the RFA, as amended by the Contract with America Advancement Act of 1996.[2]

I. Need for and Objectives of Action

26. The actions taken in this *Memorandum Opinion and Order* are in response to petitions for reconsideration of the rules and policies adopted in the *Report and Order* to streamline the Commission's broadcast application procedures, reducing both applicant and licensee burdens as well as increasing the efficiency of application processing to conserve staff resources, while at the same time preserving the public's ability to participate in the broadcast license process. The petitions are denied, with the following exceptions.

27. The first amendment to the rules and policies adopted in the *Report and Order* in this proceeding is based on petitions arguing that the promulgated provisions for seeking extension of time to construct were too restrictive and did not account for certain circumstances legitimately beyond the control of the permittee. While rejecting the majority of the petitioners' arguments, we did state that we would accord relief to permittees who are prevented form construction by operation of a Commission-imposed condition or by Commission processing requirements for permit modifications, the latter being most prevalent in the Low Power Television (''LPTV'') service.

28. Second, in response to a petition claiming that such procedure was costly and often unnecessary, we exempted applicants for assignment/transfer of control of broadcast stations from the requirement that applications proposing local radio ownership concerns must be accompanied by a contour map detailing the stations serving the pertinent broadcast ''market.'' No map would be required if the applicant could demonstrate that a sufficient number of stations are licensed to the community in question that the numerical cap will not be approached.

29. Third, the *Notice of Proposed Rule Making* (''*NPRM*'') in this proceeding[3] invited comments on a streamlined approach to FM ''minor change'' applications, which currently are evaluated under a two-tiered review process. The *NPRM* invited comment on a proposal that would parallel the approach previously adopted with respect to applications for new FM stations and ''major change'' applications. The Commission received no comments on this issue, and it was not addressed in the *Report and Order*. However, the streamlined application forms adopted in the *Report and Order* eliminated many of the second-tier review elements. Accordingly, this *Memorandum Opinion and Order* incorporates the remaining elements directly into the FM processing rules, specifically 47 CFR 73.3564.

30. Finally, this *Memorandum Opinion and Order* adopts *sua sponte* a rule permitting the use of facsimile signatures in place of the original applicant signature that had previously been required on all applications and requests for Commission action. The Commission believes that an applicant can be held accountable for false information and representations in an application whether or not the application contains an original signature, and permitting facsimile signatures will in some cases expedite the submission and processing of requests for Commission action.

II. Summary of Significant Issues Raised by Public in Response to Final Regulatory Flexibility Analysis

31. No petitions or comments were received in response to the FRFA. Several petitioners, however, raised indirectly small business-related issues. As indicated above, for example, several petitioners stated that the revised construction period/tolling procedures would disproportionately impact LPTV permittees;[4] another petitioner commented that the construction period/tolling procedures will disproportionately impact public television stations, especially those proposing to construct their initial facility as a digital broadcast station. One petitioner argued that the contemporaneous notification procedure would increase, as opposed to decrease, the burden on permittees.[5] Another petitioner claimed that the contour map submission requirement was unduly expensive and unnecessary in many assignment/transfer cases, even those involving the local radio ownership rules.[6] Finally, one petitioner noted that the requirement that broadcasters provide information regarding the race, ethnicity, and gender of any attributable owner was burdensome and unnecessary, given that ethnicity and gender data is already collected by the National Telecommunications and Information Administration (''NTIA'').[7]

III. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

32. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. A small business is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA''). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the SBA 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**.''

33. In the FRFA, we utilized the definition of ''small business'' promulgated by the SBA. No petitions or comments were received concerning the Commission's use of the SBA's small business definition for the purposes of the FRFA, and we will therefore continue to employ such definition for this Supplemental FRFA. We hereby incorporate by reference the description and estimate of the numbers of small entities from the FRFA in this proceeding.

IV. Description of Projected Reporting, Recordkeeping, and other Compliance Requirements

34. The *Report and Order* adopted a number of rules and policies that included, but reduced, reporting, record-keeping, and compliance requirements. These were described in detail in the FRFA and are not increased in any way by the rule and policy amendments adopted in this *Memorandum Opinion and Order*. Those reporting and recordkeeping requirements that were amended were in fact ameliorated. For example, certain assignment/transfer applicants will not need to submit contour maps to demonstrate compliance with the local radio ownership rules.

35. Additionally, while the *Memorandum Opinion and Order*

[2] Public Law 104–121, 110 Stat. 847 (1996) (''CWAAA''); *see generally* 5 U.S.C. 601 *et. seq.* Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA'').

[3] 13 FCC Rcd 11,349 (1998).

[4] *See* Comments of Browne Mountain Television, Equity Broadcasting Corporation, UP Wireless, L.L.C., and Z-Spanish Media, *et al.*

[5] *See* Comments of Z-Spanish Media, *et al.*

[6] *See* Comments of David Tillotson.

[7] *See* Comments of Association of America's Public Television Stations.

retains the requirement that permittees and licensees compile and retain information concerning the ethnicity and gender of its attributable owners, they must submit this information on a biennial, rather than annual, basis. As stated in the FRFA, not all broadcast licensees are required to file ownership reports at all; sole proprietorships and partnerships comprised solely of natural persons are exempt from the filing requirement. Furthermore, the modified reporting requirements apply only to commercial broadcast stations, not to the 2401 noncommercial educational FM and television stations authorized as of April 30, 1999.

V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

36. The FRFA described in some detail the steps taken in the *Report and Order* to minimize significant economic impact on small entities and the alternatives considered. The rule and policy amendments adopted in this *Memorandum Opinion and Order* should also serve to minimize the adverse impact of the ''streamlining'' rules on small entities. Initially, with respect to the revised construction period/tolling rules, we note that small entities that might require more time to construct an authorized broadcast station than would a large corporation would likely benefit from the rules adopted in the *Report and Order.* These entities would now be given on extra year to construct a new television facility and 18 extra months to complete a radio station. Furthermore, these revised construction periods apply to all outstanding permits. Therefore, to the extent that such smaller entities needing some additional time will be granted up to three ''unencumbered'' years simply upon a written request for such treatment.

37. As urged by several petitioners, the *Memorandum Opinion and Order* modifies the rules and policies promulgated in the *Report and Order* in such ways that will indirectly benefit smaller broadcast entities. For example, the elimination of the need to compose and submit station service contour maps in all assignment/transfer applications implicating the local radio ownership rules will likely benefit smaller entities owning fewer broadcast stations.

VI. Report to Congress

38. The Commission will send a copy of the *Memorandum Opinion and Order* in this proceeding, including this Supplemental FRFA, in a report that will be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 801(l)(1)(A). In addition, the Commission will send a copy of this *Memorandum Opinion and Order,* including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 73

Radio, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

Part 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

2. Section 73.3513 is amended by revising paragraph (c) to read as follows:

§ 73.3513 Signing of applications.

* * * * *

(c) Facsimile signatures are acceptable. Only the original of applications, amendments, or related statements of fact, need be signed; copies may be conformed.

* * * * *

3. Section 73.3564 is amended by revising paragraph (a)(2) and adding paragraph (a)(3) to read as follows:

§ 73.3564 Acceptance of applications.

* * * * *

(a) * * *

(2) In the case of minor modifications of facilities in the non-reserved FM band, applications will be placed on public notice if they meet the following two-tiered minimum filing requirements as initially filed in first-come/first-serve proceedings:

(i) The application must include:

(A) Applicant's name and address,

(B) Applicant's signature,

(C) Principal community,

(D) Channel or frequency,

(E) Class of station, and

(F) Transmitter site coordinates; and

(ii) The application must not omit more than three of the following second-tier items:

(A) A list of the other media interests of the applicant and its principals,

(B) Certification of compliance with the alien ownership provisions contained in 47 U.S.C. 310(b),

(C) Tower/antenna heights,

(D) Effective radiated power,

(E) Whether the antenna is directional or omnidirectional, and

(F) An exhibit demonstrating compliance with the contour protection requirements of 47 CFR 73.215, if applicable.

(3) Applications found not to meet minimum filing requirements will be returned to the applicant. Applications found to meet minimum filing requirements, but that contain deficiencies in tender and/or acceptance information, shall be given an opportunity for corrective amendment pursuant to 73.3522 of this part. Applications found to be substantially complete and in accordance with the Commission's core legal and technical requirements will be accepted for filing. Applications with uncorrected tender and/or acceptance defects remaining after the opportunity for corrective amendment will be dismissed with no further opportunity for amendment.

* * * * *

[FR Doc. 99–27638 Filed 10–21–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS–107; Amdt. 192–87]

RIN 2137–AB50

Determining the Extent of Corrosion on Gas Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule requires that when gas pipeline operators find harmful external corrosion on buried metallic pipelines that have been exposed, they must investigate further to determine if additional harmful corrosion exists in the vicinity of the original exposure. Further investigation can help determine the significance of the initial corrosion discovery. The new requirement may prevent accidents due to corrosion that might otherwise go undetected near an exposed portion of pipeline.

EFFECTIVE DATE: This final rule becomes effective November 22, 1999.

FOR FURTHER INFORMATION CONTACT: L.M. Furrow at (202) 366–4559 or furrowl@rspa.dot.gov. General information about RSPA's pipeline safety program can be obtained at http://ops.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

Whenever a gas pipeline operator learns that any portion of a buried metallic pipeline is uncovered, the operator is required to examine that portion for evidence of external corrosion, if the pipe is bare or has a deteriorated coating (49 CFR 192.459). In a notice of proposed rulemaking (NPRM) (54 FR 27041; June 27, 1989), RSPA proposed to amend this safety standard to require that when corrosion requiring remedial action is found, the operator must investigate further to determine the extent of the corrosion. The proposed rule did not specify the method or scope of further investigation.

The proposed rule was in response to a rulemaking recommendation the National Transportation Safety Board (NTSB) made after its investigation of a major gas pipeline accident that occurred February 21, 1986, in Lancaster, Kentucky. As discussed in its report of the investigation (NTSB/PAR–87–01), NTSB found that the accident could be attributed to inadequate inspection of the pipeline when it was excavated some time before the accident. Although the operator's visual inspection showed corrosion potentially requiring remedial action, the inspectors did not look for corrosion adjacent to and below the portion of pipe that had been exposed. The location of the failure was only about one foot from the location of the last corrosion pit measured when the pipe was uncovered.

The proposed rule also would conform § 192.459 with 49 CFR 195.416(e), the comparable hazardous liquid pipeline safety standard. Under this latter standard, if harmful corrosion is discovered on certain exposed hazardous liquid pipelines, the operator is required to investigate further to determine the extent of the corrosion.

Discussion of Comments

RSPA received 31 written comments on the NPRM. Twenty-seven of the comments were from gas pipeline operators; two were from trade associations representing operators, the American Gas Association (AGA) and the Interstate Natural Gas Association of America (INGAA); one was from the Public Utility Commission of Oregon; and one was from NTSB.

Many operators thought the proposed rule was reasonable. They said it was consistent with their standard operating practices.

At the same time, other operators felt existing § 192.459 implies an obligation to investigate the extent of harmful corrosion, making the proposed rule redundant. We disagree, however, because of the difference between § 192.459 and § 195.416(e). The present wording of § 192.459 does not explicitly require further investigation, while § 195.416(e) does explicitly require further investigation. This difference in regulatory terms definitely weakens the argument that § 192.459 implicitly requires further investigation.

Only three commenters, all operators, opposed the proposed rule. One of these commenters thought the proposal was unnecessary because other part 192 standards adequately cover corrosion control. However, we think the Lancaster accident shows the need for the proposed rule. If the operator's inspectors had fully investigated the pipeline in the vicinity of the excavation, they could have discovered the harmful corrosion that led to the subsequent accident. Their failure to do so was not contrary to any other part 192 corrosion control standard.

The second commenter said the proposal would discourage operators from exposing and inspecting pipelines. But considering the overriding need for excavations in maintaining or constructing buried pipelines, we doubt the proposed rule is likely to have a significant impact on excavation decisions. Moreover, we do not think excavation decisions have been inhibited by the comparable requirement of § 195.416(e) to investigate the extent of harmful corrosion.

The third commenter who opposed the proposed rule considered it ineffective because of the different approaches operators would take to comply with the rule. Yet the proposed rule was intentionally designed to permit varying approaches to compliance because of the different conditions that are encountered at excavation sites. Assuming each operator's approach is sufficient to determine the extent of harmful corrosion found at an excavation, the rule should be effective overall.

The Public Utility Commission of Oregon commented that exposed pipe should be investigated further whenever any corrosion is observed, even if the corrosion does not need remedial action. Although the aim of this comment is increased safety, we do not think it would be sensible to require operators to explore beyond the original excavation unless harmful corrosion has been observed. Otherwise, there would be no reasonable expectation that any further investigation might be productive.

Many commenters addressed the method of investigation that would be required for compliance. Most of these commenters, including AGA, liked the performance-type wording of the proposed rule, which would permit operators to use any appropriate method. A few operators, however, were concerned that the proposed rule inadequately defined the method of investigation. These commenters wanted the rule to specify particular methods, such as enlarging the excavation, digging potholes, searching corrosion and leak history records, or running an electrical survey, special leak survey, or in-line inspection. They argued that specifying methods would clarify the operator's discretion in choice of method and avoid potential disputes with government inspectors over whether continued excavation is mandatory.

We anticipated this concern about inspection methods and, in the preamble of the NPRM, explained that additional excavation would not be mandatory. We said the proposed rule would permit buried pipe at or near an excavation to be examined either visually or by indirect methods. Nevertheless, in the final rule, we have slightly modified the wording of the proposed rule to avoid possible confusion on this point. The final rule states that indirect methods may be used as well as visual examination to carry out the further investigation. We have not listed particular methods since the alternatives to excavation and visual examination for determining the presence of corrosion are well known. Also, mentioning acceptable methods could unnecessarily limit the use of new technologies.

A majority of the commenters addressed the scope of ''further investigation.'' About half of these commenters, including AGA, were pleased that the performance-type wording of the proposed rule would leave this decision to the operator's discretion. However, most of the remaining commenters were worried that the performance-type wording could be interpreted to require endless investigation of a buried pipeline for corrosion. To limit the investigation, these commenters suggested various changes to the proposed rule. One operator suggested the rule require only a reasonable effort. Several commenters, including INGAA, suggested restricting the investigations to corrosion that is ''within and continuous beyond the bounds of the exposed portion of the pipeline.'' Others suggested limiting the investigations to corrosion that is ''contiguous'' with the original

excavation. In contrast, NTSB urged us to require that investigations include the entire circumference of pipe irrespective of corrosion continuity.

The issue of how far to carry an investigation of harmful corrosion found at an excavation was discussed in the NPRM. Mindful of the Lancaster accident, we were concerned that harmful corrosion located near the exposed portion of pipe would go undetected if operators investigated only for corrosion that adjoins corrosion observed on the exposed portion. However, recognizing the complexity of specifying the scope of investigation, we stated that the proposed rule would allow operators to use their own judgment on where to stop investigating for corrosion. Although many commenters, including AGA, supported this approach, we are sensitive to the position that the proposed rule could be interpreted to set in motion a seemingly endless search for harmful corrosion on some pipelines.

We agree that only a reasonable effort should be required to find corrosion in the vicinity of an exposed, corroded pipe. Nonetheless, we believe the addition of language indicating that only a reasonable effort be made is unnecessary because performance language always requires a reasonable effort. This approach is consistent with common practice. The final rule language indicates that the operator shall investigate circumferentially and longitudinally beyond the exposed pipe to determine whether additional corrosion exists in the vicinity, as NTSB recommended in its comment.

To further define the required scope of investigation, we have also modified the wording of the proposed rule to make it clear that the investigation is required only in the vicinity of the exposed area. This change is consistent with the purpose of the proposed rule, which was to prevent accidents due to the existence of harmful corrosion near the area of pipe exposure.

A few commenters suggested that the final rule exclude distribution lines on the ground that their lower operating pressures pose less risk than transmission lines. Similarly, one commenter asked us to exclude transmission lines that operate below certain stress levels. These commenters apparently felt that further investigation of known areas of harmful corrosion is not warranted on low-pressure pipelines. We disagree. While corrosion may cause only a leak in a pipeline operating at low pressure as opposed to a rupture in a high-pressure pipeline, the damages resulting from a leak can be just as serious as from a rupture. For this reason, we have not excluded distribution lines or low-pressure transmission lines from the final rule.

Advisory Committee Review

We presented the NPRM for consideration by the Technical Pipeline Safety Standards Committee (TPSSC) at a meeting in Washington, DC on September 12, 1989. The TPSSC is RSPA's statutory advisory committee for gas pipeline safety. It has 15 members, representing industry, government, and the public, who are qualified to evaluate gas pipeline safety standards. The TPSSC voted unanimously to find the proposed rule technically feasible, reasonable, and practicable. The TPSSC's report of its consideration of the NPRM is available in the docket.

In addition, in March of this year we invited the current members of the TPSSC to review and comment on the risk assessment information related to the proposed rule, including the estimated costs and benefits included in the Regulatory Evaluation. Of the 15 committee members, only three submitted substantive comments, and these are discussed in the Final Regulatory Evaluation.

One member suggested that we publish another notice of proposed rulemaking in view of the long period since the initial notice. However, as stated above, we recently gave the TPSSC an opportunity to review and comment on the Regulatory Evaluation. We also offered the public an opportunity to comment on the Environmental Assessment of the NPRM (see further discussion below under the National Environmental Policy Act subheading). Considering these recent opportunities for additional comment and that the final rule essentially codifies standard industry practice, we feel there would be little or no new information to be gained from publishing another notice of proposed rulemaking.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

DOT does not consider this action to be a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735, October 4, 1993), and the Office of Management and Budget (OMB) has not reviewed this rulemaking document. Also, DOT does not consider this action significant under its regulatory policies and procedures (44 FR 11034, February 26, 1979).

We prepared a Final Regulatory Evaluation of the costs and benefits of this action, a copy of which is available in the docket. This Evaluation shows that because the final rule is in keeping with current practices of prudent operators, applies only in limited circumstances, and permits operators to decide both the method and extent of compliance effort, the impact of the final rule should be minimal.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), RSPA must consider whether a rulemaking would have a significant economic impact on a substantial number of small entities. Because this action is in keeping with current practices of prudent operators, applies only in limited circumstances, and permits operators to decide both the method and extent of their compliance effort, I certify that this rulemaking action will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 12612

This action would not have substantial direct effects on states, on the relationship between the Federal 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 (52 FR 41685; October 30,1987), RSPA has determined that the final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

D. Executive Order 13084

We have analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13084, ''Consultation and Coordination with Indian Tribal Governments.'' Because the final rule will not significantly or uniquely affect the Indian tribal governments, the funding and consultation requirements of Executive Order 13084 do not apply.

E. Paperwork Reduction Act of 1995

The final rule has no effect on the paperwork burden of operators subject to part 192. The action expands the scope of some inspections for which records are required by 49 CFR 192.491(c), without expanding the burden of that recordkeeping requirement.

F. Unfunded Mandates Reform Act of 1995

The final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It will not result in costs of $100 million or more to either State, local, or

tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

G. National Environmental Policy Act

We have analyzed the final rule for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). Only in limited circumstances will operators enlarge an area of exposed pipe to investigate the extent of corrosion. And non-invasive investigative techniques may be used where necessary to safeguard people and the environment.

The public was given 30 days to comment on the Draft Environmental Assessment (64 FR 28136, May 25, 1999), and one comment was received. This comment requested that operators be allowed to use corrosion pigs to locate metal loss due to corrosion in lieu of expanding the excavation. This option is allowed under the final rule.

We have determined that the final rule will not significantly affect the quality of the human environment.

H. Impact on Business Processes and Computer Systems

Many computers that use two digits to keep track of dates will, on January 1, 2000, recognize ''double zero'' not as 2000 but as 1900. This glitch, the Year 2000 Problem, could cause computers to stop running or to start generating erroneous data. The Year 2000 Problem poses a threat to the global economy in which Americans live and work. With the help of the President's Council on Year 2000 Conversion, federal agencies are reaching out to increase awareness of the problem and to offer support. We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to the Year 2000 Problem.

This final rule does not require business process changes or require modifications to computer systems. Because the final rule apparently does not affect the ability of organizations to respond to the Year 2000 Problem, we do not intend to delay the effectiveness of the rule changes.

List of Subjects in 49 CFR Part 192

Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA amends 49 CFR part 192 as follows:

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; and 49 CFR 1.53.

2. Section 192.459 is revised to read as follows:

§ 192.459 External corrosion control: Examination of buried pipeline when exposed.

Whenever an operator has knowledge that any portion of a buried pipeline is exposed, the exposed portion must be examined for evidence of external corrosion if the pipe is bare, or if the coating is deteriorated. If external corrosion requiring remedial action under §§ 192.483 through 192.489 is found, the operator shall investigate circumferentially and longitudinally beyond the exposed portion (by visual examination, indirect method, or both) to determine whether additional corrosion requiring remedial action exists in the vicinity of the exposed portion.

Issued in Washington, DC, on October 18, 1999.

Kelley S. Coyner,

Administrator.

[FR Doc. 99–27668 Filed 10–21–99; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 64, No. 204
Friday, October 22, 1999

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 ENERGY

Federal Energy Regulatory Commission

18 CFR Part 281

[Docket Nos. RM79–15–001, RM89–67–000, RM91–1–000, RM91–13–000]

Termination of Rulemaking Proceedings

Issued October 18, 1999.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Proposed rulemaking: termination.

SUMMARY: The Commission has determined that it will take no further action in Docket Nos. RM79–15–001, RM89–67–000, RM91–1–000 and RM91–13–000, and therefore, the dockets may be closed.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

Proposed Regulations for the Implementation of Section 401 of the Natural Gas Policy Act of 1978

Docket No. RM79–15–001

Hearing and Public Comment on the Proposed Rule of the Department of Energy Relating to Establishing Natural Gas Curtailment Priorities Interstate Pipelines

Docket No. RM89–67–000

Chemical Manufacturers Association

Docket No. RM91–1–000

Illinois Commerce Commission

Docket No. RM91–13–000

Order Terminating Dockets

After reviewing the records in the captioned dockets, the Commission has determined that it will take no further action in these proceedings and therefore that the dockets may be closed.

Docket Nos. RM79–15–001, RM80–67–000 and RM91–1–000

On July 29, 1981, the U.S. Court of Appeals for the DC Circuit issued an order [1] remanding in part a final rule issued by the Commission in Docket No. RM79–15–000 [2] pursuant to section 401 of the Natural Gas Policy Act (NGPA). Specifically, the court remanded the Commission's finding that it was bound, for purposes of establishing interstate pipelines' natural gas curtailment priorities,[3] by the Secretary of Agriculture's decision to certify 100 percent of agricultural users' current requirements as necessary for the maintenance of food and fiber production.

On July 17, 1980, in Docket No. RM80–67–000, the Commission issued a notice of proposed rulemaking to review natural gas curtailment priorities for interstate pipelines.

On June 19, 1990, in Docket No. RM91–1–000, Chemical Manufacturers Association (Chemical Manufacturers) filed a petition for review of natural gas pipeline curtailment procedures for the purpose of distinguishing between supply and capacity related curtailments.

Since there is no foreseeable need for curtailment of interstate pipelines' natural gas supply deliveries, the Commission is not reviewing curtailment priorities at this time.[4] Further, in the unlikely event of the need for pipeline supply curtailment arising in the foreseeable future, the records in these dockets would be stale for such purposes. Accordingly, the Commission is terminating these dockets.

Docket No. RM91–13–000

On April 30, 1991, in Docket No. RM91–13–000, the Illinois Commerce Commission filed a petition for a rulemaking to address the extent to which local distribution companies (LDCs) should be shielded from the passthrough of interstate pipelines' take-or-pay obligations as a means of providing the LDCs with relief from bypass by interstate pipelines. The Commission's bypass policy has been developed in individual cases, and the issues raised in the petition have been largely resolved. Accordingly, the Commission is terminating rulemaking Docket No. RM–13–000.

The Commission Orders

The proceedings in Docket Nos. RM79–15–001, RM80–67–000, RM91–1–000, and RM91–13–000 are terminated.

By the Commission.

David P. Boergers,

Secretary.

[FR Doc. 99–27607 Filed 10–21–99; 8:45 am]

BILLING CODE 6717–01–P

[1] Process Gas Consumers Group v. U.S. Department of Agriculture, 694 F.2d 728 (1981), *modified*, 694 F.2d 778 (1982).

[2] 44 FR 3,725 (1979).

[3] The Commission's regulations at 18 CFR Part 281 relating to natural gas curtailment priorities were promulgated in 1979. 44 FR 26,862 (May 8, 1979).

[4] Data collected by the Energy Information Administration (EIA) and summarized in its June 1999 publication on ''Natural Gas 1998, Issues and Trends'' (EIA report), shows that as the result of the Commission's open access program, almost all natural gas is now purchased directly from producers with pipelines principally providing transportation services for their customers. EIA report at p. 109. Further, the Form 2 data that the Commission requires pipelines to file shows that pipelines' gas sales have steadily decreased to relatively minimal volumes since the Commission initiated its open access program in 1985. (EIA's report is available on the Web at http://www.eia.doe.gov/oil__gas/natural__gas/analysis__publications/natural__gas__1998__issues__and__trends/it98.html.)

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

[SPATS No. KS–021–FOR]

Kansas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; withdrawal of proposed amendment.

SUMMARY: OSM is announcing the withdrawal of an amendment to the Kansas regulatory program (Kansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Kansas proposed to condense and revise its previously approved revegetation success guidelines. Kansas intended to revise its program to be consistent with the corresponding Federal regulations and to improve operational efficiency. Kansas is

withdrawing the amendment at its own initiative.

FOR FURTHER INFORMATION CONTACT: John W. Coleman, Mid-Continent Regional Coordinating Center, Office of Surface Mining, Alton Federal Building, 501 Belle Street, Alton, Illinois 62002. Telephone: (618) 463–6460. Internet: jcoleman@mcrgw.osmre.gov.

SUPPLEMENTARY INFORMATION: By letter dated July 12, 1999 (Administrative Record No. KS–616), Kansas sent us an amendment to its program under SMCRA. Kansas proposed to amend the Kansas Revegetation Guidelines.

We announced receipt of the amendment in the July 26, 1999, **Federal Register** (64 FR 40323) and invited public comment on its adequacy. The public comment period ended August 25, 1999.

On September 8, 1999 (Administrative Record No. KS–616.4), we notified Kansas of deficiencies in its amendment. On October 5, 1999 (Administrative Record No. KS–616.5), Kansas requested that the amendment be withdrawn. Kansas intends to revise the amendment and submit it at a later date. Therefore, the proposed amendment announced in the July 26, 1999, **Federal Register** is withdrawn.

List of Subjects in 30 CFR Part 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 14, 1999.

Richard J. Seibel,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 99–27670 Filed 10–21–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[SPATS No. OK–026–FOR]

Oklahoma Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of additional information and documentation to support provisions in a previously proposed amendment to the Oklahoma regulatory program (Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Oklahoma provided a policy statement for its bond release guidelines relating to revegetation success standards for diversity on lands reclaimed for use as pastureland and grazingland. Oklahoma also submitted evidence of consultation with the U. S. Soil Conservation Service (SCS) regarding the use of test plots as a statistically valid sampling technique for demonstrating success of productivity on prime farmland. Oklahoma intends to revise its program to be consistent with the corresponding Federal regulations.

This document gives the times and locations that the Oklahoma program and the additional information and supporting documentation for its previous amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4:00 p.m., c.s.t., November 22, 1999. If requested, we will hold a public hearing on the amendment on November 16, 1999. We will accept requests to speak at the hearing until 4:00 p.m., c.s.t. on November 8, 1999.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

You may review copies of the Oklahoma program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

Oklahoma Department of Mines, 4040 N. Lincoln Blvd., Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521–3859.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430. Internet: mwolfrom@tokgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. You can find background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the January 19, 1981, **Federal Register** (46 FR 4902). You can find later actions concerning the Oklahoma program at 30 CFR 936.15 and 936.16.

II. Description of the Proposed Amendment

On February 17, 1994, Oklahoma proposed to amend its program by revising its Bond Release Guidelines (Administrative Record No. OK–959.01). We approved this amendment, with additional requirements, on January 10, 1995 (60 FR 2512). By letter dated September 30, 1999 (Administrative Record No. OK–984), Oklahoma sent us additional information and documentation to support the provisions in its previously proposed amendment that we had approved with additional requirements. In the January 10, 1995, **Federal Register**, we approved sections II., III., and V.B.2.d and e of Oklahoma's bond release guidelines with the following required amendments codified at 30 CFR 936.16(c) and (g):

(c) By March 13, 1995, Oklahoma shall revise sections II.B and III.B in the Bond Release Guidelines to identify the method it will use in developing a phase III revegetation success standard for diversity on lands reclaimed for use as pastureland and grazingland.

(g) By March 13, 1995, Oklahoma must submit, before Oklahoma allows the use of test plots as proposed at subsections V.B.2.d and V.B.2.e in the Bond Release Guidelines, evidence of consultation with the U.S. Soil Conservation Service regarding the use of test plots as a statistically valid sampling technique for demonstrating success of productivity on prime farmlands.

In response to 30 CFR 936.16(c), Oklahoma provided a policy statement relating to its bond release guidelines for pastureland and grazingland. In response to 30 CFR 936.16(g), Oklahoma submitted evidence of consultation with the SCS regarding the use of test plots as a statistically valid sampling technique for demonstrating success of productivity on prime farmland. Following is a summary of the additional information and documentation.

A. II. Pastureland and III. Grazingland—Subsections A.1.g.; 30 CFR 936.16(c)

In its letter dated September 30, 1999, Oklahoma included a policy statement that identifies the method it will use in developing a revegetation success standard for diversity on lands reclaimed for use as pastureland and grazingland. Oklahoma indicated that the currently approved provisions in its Bond Release Guidelines under II.A.1.g. and III.A.1.g. contain the required diversity standards:

> g. Perennial species that are not listed in the approved reclamation plan but which the Department approves as being desirable and compatible with the postmining land use can make up to 20% of total ground cover not to exceed 5% ground cover by any one of these species.

Oklahoma stated that the above Bond Release Guidelines ensure that 80% of the ground cover is composed of the species listed in the approved reclamation plan and that it is comprised of vegetation that meets the requirement for seasonality, permanence, and regeneration on both pastureland and grazingland. In a letter dated May 21, 1996 (Administrative Record OK–960.04), Oklahoma stated that the above diversity standard is based primarily on the seed mix and the comparison of this seed mix to the stand established after reclamation.

B. V. Prime Farmland Cropland—Subsections V.B.2.d and e; 30 CFR 936.16(g)

Oklahoma submitted a letter from the SCS dated March 2, 1993, as evidence of consultation with the SCS regarding the use of test plots as a statistically valid sampling technique for demonstrating success of productivity on prime farmland. In this letter, the SCS stated that it had reviewed Oklahoma's proposal on sampling techniques for row crops on prime farmland. The SCS also referred Oklahoma to Dr. James Stiegler at the Oklahoma State University for technical evaluation of its statistical methods of sampling. Oklahoma submitted a letter from the Dr. James Stiegler dated April 24, 1996. In this letter, Dr. Stiegler stated:

> I have looked over the material that you have provided to me regarding the statistical adequacy of using test plots to prove the productivity of reclaimed soils. The method of selecting and sampling of the test plots as described will result in valid data to support soil productivity.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the additional information and documentation satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Oklahoma program.

Written Comments

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office.

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SPATS No. OK–026–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Tulsa Field Office at (918) 581–6430.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.s.t. on November 8, 1999. We will arrange the location and time of the hearing with those persons requesting the hearing. If you are disabled and need special accommodation to attend a public hearing, contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The hearing will not be held if no one requests an opportunity to speak at the public hearing.

To assist the transcriber and ensure an accurate record, we request that you provide us with a written copy of your testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the amendment, request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We also make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions

within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 15, 1999.

Richard J. Seibel,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 99–27671 Filed 10–21–99; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 85 and 86

[AMS–FRL–6462–6]

RIN 2060–AI12, 2060–AI23

Control of Emissions of Air Pollution From 2004 and Later Model Year Highway Engines and Vehicles; Revision of Light-duty Truck Definition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearing.

SUMMARY: This document announces the time and place for a public hearing regarding EPA's proposed rule to implement new emission standards for highway vehicles and engines. The proposed rule was signed by the EPA Administrator on October 6, 1999, and will be published in the **Federal Register** prior to the hearing. See **ADDRESSES** for availability of the proposed rule.

DATES: EPA will conduct a public hearing on the proposed rule on November 2, 1999, in Philadelphia, PA beginning at 10:00 a.m. We must receive your comments on this NPRM by December 2, 1999. EPA requests that parties who want to testify notify the contact person listed in the **ADDRESSES** section of this document one week before the date of the hearing.

ADDRESSES: The public hearing will be held at Top of the Tower, 1717 Arch Street, 51st Floor, Philadelphia, PA 19103, telephone: 215–567–8787, fax: 215–557–5171. Materials relevant to the proposal have been placed in Docket Nos. A–98–32 and A–95–27. The docket is located at the Air Docket Section, Mail Code 6102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460, in room M–1500 Waterside Mall. Documents may be inspected Monday through Friday from 8:00 a.m. to 5:30 p.m. The telephone number is (202) 260–7548 and the facsimile number is (202) 260–4400. A reasonable fee may be charged by EPA for copying docket materials.

The proposed rule is available in the public docket for review, and was also made available on the EPA web page on October 6, 1999. See: http://www.epa.gov/oms/hd-hwy.htm.

Written comments should be submitted (in duplicate, if possible) to: EPA Air and Radiation Docket, Attn: Docket No. A–98–32, Room M–1500 (Mail Code 6102), 401 M Street SW, Washington, DC 20460. EPA requests that a copy of the comments also be sent to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Margaret Borushko, U.S. Environmental Protection Agency, Engine Programs and Compliance Division, 2000 Traverwood Drive, Ann Arbor, MI, 48105–2498. Telephone (734) 214–4334; Fax (734) 214–4816; e-mail borushko.margaret@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Procedures for Public Participation

A. Comments and the Public Docket

The Agency encourages all parties that have an interest in this proposal to offer comment on various topics. The most useful comments are those supported by appropriate and detailed rationales, data, and analyses. The Agency also encourages commenters that disagree with elements of the proposal to suggest and analyze alternate approaches to meeting the air quality goals of this proposal. All comments, with the exception of proprietary information, should be directed to the EPA Air Docket Section, Docket No. A–98–32 before the date specified above. Information related to this rulemaking is also found in dockets A–95–27 and A–97–10.

Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments by (1) labeling proprietary information ''Confidential Business Information'' and (2) sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**) and not to the public docket. This will help ensure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to use a submission of confidential information as part of the basis for the final rule, then a non-confidential version of the document that summarizes the key data or information should be sent to the docket. Any information or data that constitutes, in whole or in part, a basis of EPA's regulatory actions will be made public.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and in accordance with the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it will be made available to the public without further notice to the commenter.

B. Public Hearing

The Agency will hold a public hearing as noted in the **DATES** section above. Any person desiring to present testimony at the public hearing is asked to notify the contact person listed above at least one week prior to the date of the hearing. This notification should include an estimate of the time required for the presentation of the testimony and any need for audio/visual equipment. EPA suggests that sufficient copies of the statement or material to be presented be available to the audience. In addition, it is helpful if the contact person receives a copy of the testimony or material prior to the hearing.

The hearing will be conducted informally, and technical rules of evidence will not apply. A sign-up sheet

will be available at the hearing for scheduling the order of testimony. A written transcript of the hearing will be prepared. The official record of the hearing will be kept open for 30 days after the hearing to allow submittal of supplementary information.

Dated: October 18, 1999.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 99–27674 Filed 10–21–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL–6461–5]

State of Alabama; Underground Injection Control (UIC) Program Revision; Approval of Alabama's Class II UIC Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA announces a proposed rulemaking, public hearing and public comment period regarding approval of Alabama's Class II Underground Injection Control (UIC) Program Revision to regulate as ''underground injection'' hydraulic fracturing associated with coal bed methane gas production. Section 1422(b)(4) of the Safe Drinking Water Act (SDWA) requires that prior to approving, disapproving, or approving in part a State's UIC program, the Administrator provide opportunity for a public hearing. This notification advises the public of the date, time and location of the public hearing. The public comment period and public hearing will provide EPA with information and public opinion necessary to approve, disapprove, or approve in part under provisions of section 1425 of the SDWA, the revision application from the Alabama Oil and Gas Board to regulate hydraulic fracturing of coal beds. The proposed rulemaking is the Agency's preliminary determination to approve revision to Alabama's Class II UIC program administered by the State Oil and Gas Board.

DATES: Written comments on EPA's proposed rule approving the Alabama Class II UIC Program Revision must be received by the close of business Monday, November 29, 1999. A public hearing will be held Monday, November 22, 1999, at 5:00 p.m. Central Standard Time (CST) to discuss approval of the Alabama Class II UIC Program revision to regulate hydraulic fracturing of coal beds. Registration for the hearing will begin at 4:00 pm; however, speakers may also register prior to the meeting.

ADDRESSES: Persons wishing to comment upon or object to any aspects of this proposed approval action of Alabama's revision to its Class II Program are invited to submit oral or written comments at the public hearing or submit written comments to the Ground Water/Drinking Water Branch, Ground Water & UIC Section, United States Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303–8960, Attention: Mr. Larry Cole. Copies of documents regarding this action are available for inspection and copying between 8:30 a.m. and 4:00 p.m. Monday through Friday at the following locations: Environmental Protection Agency, Region 4, 9th Floor Library, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303–8960, PH: (404) 562–8190; and the State Oil & Gas Board of Alabama, 420 Hackberry Lane, Tuscaloosa, AL 35489–9780, PH: (205) 349–2852.

The public hearing will be held at the University of Alabama in the Sellers Auditorium of the Bryant Conference Center, 240 Bryant Drive, Tuscaloosa, Alabama 35401. Those interested should contact the Bryant Conference Center at (205) 348–8751 for directions.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Cole, at (404) 562–9474 or at the following address: Environmental Protection Agency, Water Management Division, Ground Water/Drinking Water Branch, Ground Water & UIC Section, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303–8960.

SUPPLEMENTARY INFORMATION:

I. Background Information

On August 2, 1982, EPA granted primary enforcement responsibility (primacy) for the Class II Underground Injection Control (UIC) Program under section 1425 of the Safe Drinking Water Act (SDWA) to the State of Alabama. The SDWA requires EPA to approve an effective in-place state UIC Program to protect Underground Sources of Drinking Water (USDW) from endangerment that could result from the improper injection of fluids associated with, among other things, oil and gas production. On May 3, 1994, the Legal Environmental Assistance Foundation, Inc. (LEAF) submitted a petition to EPA to withdraw Alabama's UIC Program asserting that the State was not regulating activities associated with coal bed methane gas production wells. Following EPA's May 5, 1995 denial of the petition, LEAF sought review of this decision by the United States Court of Appeals for the Eleventh Circuit. On August 7, 1997, in *LEAF* v. *EPA*, 118 F. 3d 1467 (11th Cir. 1997), the Court held as follows: hydraulic fracturing activities constitute ''underground injection'' under Part C of the Safe Drinking Water Act, *id.* at 1478; all underground injection is required to be regulated (by permit or rule), *id.* at 1474; and hydraulic fracturing associated with coal bed methane gas production is not currently regulated under Alabama's UIC Program, *id.* at 1471. On February 18, 1999, the Eleventh Circuit issued a Writ of Mandamus directed at EPA to enforce its August 1997 decision. The Writ established a schedule for EPA to follow to determine whether, in light of the Court's ruling regarding hydraulic fracturing, EPA should withdraw approval of Alabama's UIC Program. The Writ also stated that once hydraulic fracturing associated with methane gas production is regulated as underground injection by the State of Alabama and the program revision is approved by EPA, the withdrawal proceedings may cease. To date, EPA has been following the Writ of Mandamus withdrawal schedule pending approval of Alabama's program revision.

Withdrawal Activities to Date

Section 1425 of the SDWA and subsequent published EPA guidance documents do not contain express procedures for the withdrawal of a section 1425 program. EPA has promulgated procedures for withdrawing a section 1422 program at 40 CFR 145.34(b). In light of the Court's Writ of Mandamus, which essentially tracks the withdrawal procedures in section 145.34(b), EPA followed these procedures in proposing to withdraw Alabama's section 1425 program.

On March 19, 1999, the Regional Administrator of EPA Region 4 notified the Supervisor of the State Oil and Gas Board of Alabama of EPA's decision to initiate the process to withdraw approval of the Alabama UIC Program. The Regional Administrator's notice to the Supervisor of the State Oil and Gas Board of Alabama constituted the first step in the withdrawal process. According to the procedures established in 40 CFR 145.34(b) and the Writ of Mandamus, the State was given 30 days after the notice to demonstrate that its UIC Program is in compliance with the SDWA and 40 CFR part 145 (i.e., that hydraulic fracturing associated with methane gas production is regulated as

''underground injection,'' by permit or rule, pursuant to the EPA approved Underground Injection Control Program). The Supervisor of the State Oil and Gas Board responded to the Regional Administrator's letter by a letter dated April 15, 1999. The response indicated that on March 5, 1999, the State Oil & Gas Board of Alabama promulgated rules which regulate hydraulic fracturing of coal bed methane gas wells by rule authorization. These new regulations were added as an Emergency Order and sent to the Alabama Legislative Reference Service under section 41–22–5 of the Code of Alabama (1975). They became effective on March 11, 1999, for a period of no longer than 120 days, and indicated that the State Oil & Gas Board rule would be made permanent prior to the expiration of the Emergency Order.

By letter dated May 18, 1999, the Regional Administrator notified the Supervisor of the State Oil and Gas Board that, in order for the regulation of hydraulic fracturing for coal bed methane to become part of an EPA approved UIC program, Alabama should submit a revised UIC program package containing new regulations to EPA for review and approval. That action constituted the second step in the withdrawal process set out in 40 CFR 145.34(b) and the Writ of Mandamus.

On May 21, 1999, Region 4 announced in the **Federal Register** a public hearing in the Tuscaloosa Public Library on July 28, 1999 giving the public the opportunity to comment on withdrawal of Alabama's Class II Underground Injection Control Program. Region 4 received written and oral comments at the hearing, but the hearing was canceled prior to conclusion by the Tuscaloosa Fire Marshall due to overcrowding. In the August 10, 1999, **Federal Register**, Region 4 rescheduled the July 28, 1999 public hearing for September 9, 1999, and extended the public comment period until September 16, 1999, allowing the public the opportunity to make comments concerning withdrawal of Alabama's Class II UIC program. At the September 9, 1999, public hearing, Region 4 received comments from concerned citizens, the Legal Environmental Assistance Foundation, industry representatives, and the Alabama Chapter of the Sierra Club. Comments obtained from both of those public hearings and written comments received until the close of business on September 16, 1999, are part of Region 4's administrative record on the proposed withdrawal of Alabama's UIC program.

EPA received a wide range of comments. Some considered Alabama's hydraulic fracturing rule, originally adopted by the Oil and Gas Board in March 1999, and revised by the Board in August 1999, adequate to protect underground sources of drinking water; others did not. Some comments at the public hearing reflected environmental concerns from hydraulic fracturing activities beginning in September of 1989. Other comments recommended adding a tracer to the hydraulic fracturing fluid in order to verify if the fracturing fluids are endangering USDWs. Some commented that potential over-regulation of the coal bed industry could place an undue economic burden on industry. Written and oral comments received at both public hearings, plus written comments received during the public notice comment period were reviewed by EPA Region 4 after the public notice comment period ended on Thursday, September 16, 1999.

On September 23, 1999, the Regional Administrator of Region 4 notified the Supervisor of the State Oil and Gas Board of Alabama's Class II UIC program's continuing specific deficiencies and necessary remedial actions. That action constituted the third step in the withdrawal process set out in 40 CFR 145.34(b). If the State of Alabama's program revision correcting the deficiencies is not approved by EPA through rulemaking by December 22, 1999, the Writ of Mandamus directs EPA to withdraw approval of Alabama's UIC Program.

Alabama Class II UIC Program Revision

The Safe Drinking Water Act required EPA to implement a regulatory program to prevent underground injection activities from endangering Underground Sources of Drinking Water (USDWs) which are aquifers capable of yielding a significant amount of drinking water containing less than 10,000 milligram per liter (mg/liter) of total dissolved solids. The State of Alabama currently has primary responsibility for implementing a UIC program preventing endangerment of USDWs. The Alabama Oil and Gas Board has held primary enforcement authority for the Class II UIC program since the program was originally approved by EPA pursuant to section 1425 of the SDWA on August 2, 1982. The application for program revision submitted by the Alabama Oil and Gas Board on October 6, 1999, requests that EPA approve the program revision for primary administrative and enforcement authority for the regulation of hydraulic fracturing of coal beds on all lands subject to the State's police power and taxing authority and all lands owned or under the jurisdiction of the United States, except those wells located on Indian lands as defined in 40 CFR 144.3. The application includes a program description, copies of all applicable rules and forms, a statement of legal authority and appropriate memoranda of agreement.

EPA is proposing to approve Alabama's UIC program revision addressing hydraulic fracturing pursuant to section 1425 of the SDWA. Section 1425 provides that EPA may approve that portion of a State's UIC program which relates to ''any underground injection for the secondary or tertiary recovery of oil or natural gas'' if the program meets certain requirements of section 1421 and ''represents an effective program (including adequate recordkeeping and reporting) to prevent underground injection which endangers drinking water sources.'' EPA interprets section 1425 broadly as establishing an alternative method (in lieu of the showing required by section 1422(b)(1)(A)) for a State to obtain primary enforcement responsibility for those portions of its UIC program related generally to the recovery and production of oil and natural gas (46 FR 27333 (May 19, 1981)). Accordingly, EPA is proposing to approve the hydraulic fracturing component of Alabama's UIC program under section 1425.

Although section 1425 of the SDWA does not specifically refer to hydraulic fracturing for methane production, it is reasonable to assume that Congress would have intended that approval of State underground injection programs relating to this type of gas production activity would fall within the more flexible approval standards Congress established for oil- and gas-related injection programs in section 1425. The legislative history of section 1425 indicates that Congress intended it to cover the same set of underground injection practices related to oil and gas production as had been covered by section 1422, i.e., all of them. Nothing suggests that Congress, in creating an alternative demonstration for ''secondary or tertiary recovery''-related injection under section 1425, was leaving behind another undefined category of oil- and gas-related injection activities for approval exclusively pursuant to section 1422. Congress' use of the terms ''secondary or tertiary recovery'' in section 1425 in all likelihood reflects nothing more than Congress' belief that those terms covered all relevant oil- and gas-related

injection activities. To conclude otherwise would require States to seek approval for their oil- and gas-related UIC program under *both* section 1425 *and* 1422. This would be both inefficient and inconsistent with Congress' expressed admonition that EPA not prescribe unnecessary requirements related to oil- and gas-related injection (42 U.S.C. 300h(b)(2)).

Pursuant to the State of Alabama's authority under section 9–17–6(c)(3) and (13) of the Code of Alabama and in accordance with the Eleventh Circuit's LEAF decision, the State Oil and Gas Board of Alabama adopted on August 20, 1999, a rule to regulate hydraulic fracturing of coal beds. This rule, submitted to EPA along with Alabama's program revision package, embodies the State's requirements for such fracturing activities. In summary, the new rule (Rule 400–4–5–.04) establishes standards and procedures which the State Oil and Gas Board of Alabama will apply when evaluating proposals to hydraulically fracture coal beds. Among other things, Rule 400–4–5–.04 of the State Oil and Gas of Alabama Administrative Code specifically provides that each coal bed shall be hydraulically fractured so as not to endanger any underground source of drinking water (USDW), and coal beds shall not be hydraulically fractured in a manner that allows the movement of fluid containing any contaminant into a USDW, if the presence of that contaminant may cause a violation of any applicable primary drinking water regulation under 40 CFR part 141 or otherwise adversely affect the health of persons. It is EPA's interpretation that this is consistent with part C of the Safe Drinking Water Act.

The rule establishes requirements that, should hydraulic fracturing of coal bed operations occur in a USDW, the operator must certify that the injectate meets drinking water standards before approval for injection can be obtained. Additional requirements pertaining to the depth of the hydraulic fracturing operation and geologic confining strata were established to prevent impacts on private and public drinking water supplies. For example, hydraulic fracturing of coal beds is prohibited at depths of less than 300 feet from the surface. Fracturing at lower depths also requires additional demonstrations including delineation of drinking water use around the fracturing operation and assurances for the prevention of upward movement of fluids. For every proposal to hydraulically fracture a coal bed, written approval from the Oil and Gas Supervisor must be obtained before the operation can commence.

EPA Region 4 believes that Rule 400–4–5–.04's requirements, together with the additional elements of Alabama's revision package, represent an effective program to prevent underground injection which endangers drinking water sources. Section 1425 requires a State to demonstrate that its Underground Injection Control (UIC) Program meets the requirements of section 1421(b)(1)(A) through (D) and represents an effective program (including adequate record keeping and reporting) to prevent underground injection which endangers drinking water sources. Accordingly, section 1425 requires that a State, in order to receive approval under the optional demonstration, makes a successful showing that its program meets the following five conditions:

(1) Section 1421(b)(1)(A) requires that an approvable State program prohibit any underground injection in such State which is not authorized by permit or rule.

(2) Section 1421(b)(1)(B) requires that an approvable State program shall require that: (i) the applicant for a permit must satisfy the State that the underground injection will not endanger drinking water sources; and (ii), no rule may be promulgated which authorizes any underground injection which endangers drinking water sources.

(3) Section 1421(b)(1)(C) requires that an approvable State program include inspection, monitoring, record keeping, and reporting requirements.

(4) Section 1421(b)(1)(D) requires that an approvable State program apply to: (i) underground injection by Federal agencies; and (ii), underground injection by any other person, whether or not occurring on property owned or leased by the United States.

(5) Section 1425(a) requires that an approvable State program represent an effective program to prevent underground injection which endangers drinking water sources.

EPA Region 4 has concluded that the current Rule 400–4–5–.04, (Protection of Underground Sources of Drinking Water during the Hydraulic Fracturing of Coal Beds), along with the rest of Alabama's revision package, satisfies the above five conditions of section 1425 for approving a State's program. The basis for our conclusion for each condition is as follows:

(1) Rule 400–4–5.–04 (4) states, ''Coal beds shall not be hydraulically fractured until the written approval of the Supervisor is obtained.'' This satisfies the requirement of section 1421(b)(1)(A).

(2) Section 1421(b)(1)(B)(i) is satisfied because, while the Alabama regulation does not establish a permit requirement, Rule 400–4–5–.04(4) states, ''Coal beds shall not be hydraulically fractured until the written approval of the Supervisor is obtained.'' Section 1421(b)(1)(B)(ii) is also satisfied because Rule 400–4–5–.04(2) states, ''Coal beds shall not by hydraulically fractured in a manner that allows the movement of fluid containing any contaminant into a USDW, if the presence of that contaminant may: (a) cause a violation of any applicable primary drinking water regulation under 40 CFR part 141; or (b) otherwise adversely affect the health of persons.''

(3) Section 1421(b)(1)(C) is satisfied since Rule 400–4–5-.04 includes inspection, monitoring, recordkeeping and reporting requirements. The State rule provides adequate inspection of a hydraulic fracturing operation in accordance with section 1421(b)(1)(C). The last sentence of Rule 400–4–5–.04(4) states that ''In accordance with Rule 400–4–3–.01(2), the Supervisor may send a duly authorized representative to witness the fracturing operation.'' Additionally, Rule 400–4–5–.04(5)(c)(3), which covers coal beds in the depth interval 300 to 749 feet states that, ''A representative of the Board shall conduct a field reconnaissance within a ¼-mile radius of the coalbed methane gas well to determine the location of any additional fresh-water supply wells that may not be identified in the previous described documents.''

The rule also provides for adequate monitoring of fracturing operations. Rule 400–4–5–.04(3) states that, ''the operator shall certify in writing to the Supervisor that the proposed fracturing operation will not occur in a USDW,'' and provide evidence supporting how the determination was made. Otherwise, if the proposed fracturing occurs in a USDW, the operator shall certify in writing to the Supervisor that the mixture of fluids to be used to hydraulically fracture the coal beds does not exceed the maximum contaminant levels contained in 40 CFR part 141, subpart B and G. EPA believes these requirements of the Alabama State Rule adequately fulfill the monitoring requirements of an effective State program.

The rule provides for adequate reporting requirements. In addition to Rule 400–4–5–.04(3) mentioned above, Rule 400–4–5–.04(5)(a)(3) requires the submittal of Form OGB–7, Well Record and Completion Report, for casing and cementing specifications. If the coal bed methane gas well is in a state of completion or recompletion, and Form OGB–7 is not required to be filed with the Board prior to the fracturing operation, then the Supervisor shall require the operator to submit a wellbore schematic showing the specifications of the casing and cementing program.

The rule also provides for adequate recordkeeping. Rule 400–4–5–.04(7) requires that operators maintain records until such time that the coalbed methane gas well has been plugged for permanent abandonment, but not less than three (3) years following completion of the fracturing operation.

(4) Section 1421(b)(1)(D) is satisfied since the State's Rule and Alabama's existing UIC Program applies to all relevant entities. The Alabama Oil and Gas Board has the authority to regulate operators who hydraulically fracture coal beds. Rule 400–1–1.03(32) defines operator as ''any person who, duly authorized, is in charge of the development of a lease or the operation of a producing well, and, in addition, for the purpose of assigning responsibility, may also be the person indicated as operator by the most current records of the Board.'' Rule 400–1–1–.03(34) defines person as ''any natural person, firm, corporation, association, partnership, joint venture, receiver, trustee, guardian, executor, administrator, fiduciary, representative of any kind, or any other group acting as a unit, and the plural as well as the singular number.'' Therefore, this program revision applies to underground injection by Federal agencies and underground injection by any other person, whether or not occurring on property owned or leased by the United States.

(5) Finally, the requirement of section 1425 is met because the current revision application package and Rule 400–4–5–.04, represents an effective program under section 1425(a) to prevent underground injection which endangers drinking water sources. State Rule 400–4–5-.04 (2) states, ''Coal beds shall not be hydraulically fractured in a manner that allows the movement of fluid containing any contaminant into a USDW, if the presence of that contaminant may: (a) cause a violation of any applicable primary drinking water regulation under 40 CFR part 141; or (b) otherwise adversely affect the health of persons.'' This statement embodies and is consistent with the ''endangerment'' standard in section 1421(d)(2) of the SDWA. This statement provides the basic prohibition against hydraulic fracturing which endangers drinking water sources.

The State has also adopted a number of regulatory provisions preventing underground injection which endangers drinking water sources. State Rule 400–4–5–.04(3) states, ''The operator shall certify in writing to the Supervisor that the proposed fracturing operation will not occur in a USDW. Evidence that supports how the determination was made shall accompany such certification and be acceptable to the Supervisor. Otherwise, the operator shall certify in writing to the Supervisor that the mixture of fluids to be used to hydraulically fracture the coal beds does not exceed the maximum contaminant levels contained in 40 CFR part 141, subpart B and G.'' This provision requires a certification that fracturing fluids will not be injected into a USDW or establishes specifications for the specifications for the quality of the injectate should the injection occur into the USDW. Specifically, it states that the injectate must meet drinking water standards. Therefore, EPA concludes that adequate provisions have been established to prevent endangerment from hydraulic fracturing operations.

State Rule 400–4–5–.04(5)(a)5 states, ''A geophysical log, or gamma ray log, shall be evaluated to determine the type and thickness of strata overlying the uppermost coal bed to be fractured. Impervious strata, such as shale, must overlie the uppermost coal bed and be of sufficient thickness and consistency to serve as a barrier to the upward movement of fluids. Otherwise, a fracturing proposal will be denied.'' This provision will ensure that underground injection will not cause movement of fluids from the fracturing zone, which may be of lesser quality, into upper underground sources of drinking water. Should injection occur below the USDW, where injectate quality will not be addressed by 400–4–5–.04(3), this provision prohibits the upward movement of injectate and other formation fluids into the USDW. The quality (measured as total dissolved solids) of aquifers in the formations where hydraulic fracturing of coal beds occurs generally decreases as depth of the aquifer increases (Passion et al, 1991; Passion and Hinkle, 1997). In other words, if injection does not occur in a USDW, it is probably below the lowermost USDW. Therefore, injection occurring below the USDW is prevented from moving upwards into the USDW and downward movement would not be towards a USDW. EPA concludes that adequate provisions have been established to prevent endangerment from movement of injection fluids and formation fluids into a USDW.

Additional protection is afforded because operators will be required to follow the requirements of Rule 400–4–3–.02, Casing Requirements, which will be evaluated by the Supervisor to ensure compliance. Hydraulic fracturing will not be allowed unless the coalbed methane well is constructed in accordance with Rule 400–4–3.02. Rule 400–4–3.02 provides requirements to ensure the integrity of the surface casing and provides minimum criteria for cased hole and open-hole completion of coalbed methane wells. In accordance with Rule 400–4–5.04(2), ''any coalbed methane gas well that is not constructed in accordance with Rule 400–4–3–.02 shall not be allowed to produce and may be required to be immediately plugged and abandoned.'' Therefore, EPA concludes that adequate provisions have been established to prevent endangerment during hydraulic fracturing caused by well integrity failure.

Additionally, a Cement Bond Log shall be evaluated for coal bed proposals in the 750–1000 feet depth range and is required for Coal Bed proposals in the 300–749 feet depth range to ascertain the top of cement and degree of bonding above the upper most coal bed to be fractured. Rule 4004–5–.04(5)(c) also requires that records of fresh-water supply wells within a ¼-mile radius of the coal bed gas well shall be used in delineating the construction and completion depth of such supply wells. A field reconnaissance within a ¼-mile radius to determine the location of any additional fresh-water supply wells shall be conducted by the Board. Fracturing operations shall not be allowed if the Supervisor determines that any fresh-water supply well located within ¼-mile radius of the coal bed methane gas well could be adversely impacted in a manner described in part 400–4–5.04(2) of the rule as a result of the fracturing operation. All of these provisions provide additional assurances that underground injection does not endanger drinking water sources.

Rule 400–1–1.06, referenced in Alabama's revision package, requires operators to allow and assist State agents in making any and all inspections that may be required by the Board. The agents are to have access to all records and shall be permitted to come upon any property at all times to make such inspections. This ensures an adequate surveillance program is in place to determine compliance with its requirements of Rule 400–4–5.04 and State regulations and provides an effective means to enforce against violators.

EPA concludes that Alabama's UIC revision application satisfies section 1425(a) which requires that an approvable State program represents an effective program to prevent underground injection which endangers drinking water sources.

At the public hearing EPA will accept comments on its proposal to approve Alabama's review to its Class II UIC

Program covering hydraulic fracturing. Copies of **Federal Register** outlining this rule will be available at the public hearing and can be also be obtained by contacting Larry Cole at EPA.

II. Regulatory Impact

A. Executive Order 12866: Regulatory Planning and Review

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:

a. 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;

b. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

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

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

This rule does not meet any of the conditions described above and therefore, is not a ''significant regulatory action'' and is not subject to OMB review. The rule would only approve regulations adopted by the State of Alabama and effective as a matter of State law and, therefore, would not itself adversely affect in a material way any of the activities or entities referred to in the Executive Order.

B. Executive Order 13045: Children's Health Protection

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks authorized by this action impact children. The rule would merely approve regulations adopted by the State of Alabama and effective as a matter of State law and would not itself bring about any changes in environmental protection in the State of Alabama. Therefore it would not present any foreseeable effect on children's health and well being.

C. Paperwork Reduction Act

EPA has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, does not apply to this proposed rule since no information collection requirements would be established by this rule.

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), EPA generally is required to prepare an initial regulatory flexibility analysis describing the impact of the regulatory action on small entities as part of any proposed rulemaking. However, under section 605(b) of the RFA, if EPA certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare an initial regulatory flexibility analysis. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this proposed rule would not have a significant economic impact on small entities.

This rule would not have a significant economic impact on a substantial number of small entities because the rule would not create any new requirements but merely approve regulations adopted by the State of Alabama and effective as a matter of State law. Accordingly, the rule would impose no additional requirements on small entities beyond those already imposed under Alabama law and, therefore, would have no economic impact on such entities.

E. Executive Orders on Federalism

Under Executive Order 12875 (48 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of the EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule would not create a mandate on state, local or tribal governments. The rule would not impose any enforceable duties on these entities. The rule would merely approve regulations adopted by the State of Alabama to ensure that hydraulic fracturing of coal bed seams in connection with methane gas production will not endanger underground sources of drinking water.

On August 4, 1999, President Clinton issued a new Executive Order on Federalism, Executive Order 13132, (64 FR 43255 (August 10, 1999)), which will take effect on November 2, 1999. In the interim, the current Executive Order 12612, (52 FR 41685 (October 30, 1987)), on federalism still applies. This rule would not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612, because this rule would affect only one State. This rule would simply approve regulations adopted by the State of Alabama to ensure that hydraulic fracturing of coal bed seams in connection with methane production will not endanger underground sources of drinking water and make such regulations part of the federally-approved UIC program that the State has voluntarily chosen to operate.

F. 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. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule does not contain a federal mandate (under the regulatory provisions of Title II of UMRA) for state, local, and tribal governments, or the private sector. Today's rule would merely approve requirements already in place in the State of Alabama. The rule would impose no additional enforceable duty on any state, local or tribal governments 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, thus, today's rule is not subject to the requirements of section 203 of UMRA.

G. National Technology Transfer and Advancement Act

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

EPA does not believe that this proposed rule addresses any technical standards subject to the NTTAA.

H. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's proposed rule would not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 147

Environmental protection, Intergovernmental relations, Water supply.

Dated: October 14, 1999.

John H. Hankinson, Jr.,

Regional Administrator, Region 4.

For the reasons set out in the preamble, 40 CFR part 147 is proposed to be amended as follows:

PART 147—[AMENDED]

1. The authority citation for part 147 continues to read as follows:

Authority: 42 U.S.C. 300h; and 42 U.S.C. 6901 *et seq.*

Subpart B—Alabama

2. Section 147.52 is added to Subpart B to read as follows:

§ 147.52 State-administered program—Hydraulic Fracturing of Coal Beds.

The UIC program for hydraulic fracturing of coal beds in the State of Alabama, except those on Indian lands, is the program administered by the State Oil and Gas Board of Alabama, approved by EPA pursuant to section 1425 of the SDWA. Notice of this approval was published in the **Federal Register** on [date of final rule]; the effective date of this program is 30 days after the date of publication of the Notice of Approval. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) Incorporation by reference. The requirements set forth in the State regulations, 400–4–5–.04. Protection of Underground Sources of Drinking Water during the Hydraulic Fracturing of Coal Beds, are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Alabama. This incorporation by reference was approved by the Director of the **Federal Register** on _____ in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(b) The Memorandum of Agreement between EPA Region 4 and the Alabama Oil and Gas Board and addendums signed by the EPA Regional Administrator.

(c) Statement of Legal Authority. ''Pursuant to my authority as Attorney General for the State of Alabama and for reasons set forth in this statement, I hereby certify that in my opinion, the laws of the State of Alabama provide the State Oil and Gas Board (hereinafter referred to as ''the Board'') adequate authority to carry out an Underground Injection Program for the control of underground injection activity related to the hydraulic fracturing of coal beds.'' Opinion by Attorney General dated October 8, 1999.

(d) The Program Description and any other materials submitted as part of the application or as supplements thereto.

[FR Doc. 99–27516 Filed 10–18–99; 2:49 pm]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6462–2]

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 30

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'' or ''the Act''), requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This proposed rule proposes to add 9 new sites to the NPL. All of the sites are being proposed to the General Superfund Section of the NPL.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before December 21, 1999.

ADDRESSES: *By Postal Mail:* Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; (Mail Code 5201G); 401 M Street, SW; Washington, DC 20460; 703/603–9232.

By Express Mail: Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; 1235 Jefferson Davis Highway; Crystal Gateway #1, First Floor; Arlington, VA 22202.

By E-Mail: Comments in ASCII format only may be mailed directly to superfund.docket@epa.gov. E-mailed comments must be followed up by an original and three copies sent by mail or express mail.

For additional Docket addresses and further details on their contents, see section II, ''Public Review/Public Comment,'' of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center, Office of Emergency and Remedial Response (Mail Code 5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
A. What are CERCLA and SARA?
B. What is the NCP?
C. What is the National Priorities List (NPL)?
D. How are Sites Listed on the NPL?
E. What Happens to Sites on the NPL?
F. How Are Site Boundaries Defined?
G. How Are Sites Removed From the NPL?
H. Can Portions of Sites Be Deleted from the NPL as They Are Cleaned Up?
I. What is the Construction Completion List (CCL)?
II. Public Review/Public Comment
A. Can I Review the Documents Relevant to This Proposed Rule?
B. How do I Access the Documents?
C. What Documents Are Available for Public Review at the Headquarters Docket?
D. What Documents Are Available for Public Review at the Regional Dockets?
E. How Do I Submit My Comments?
F. What Happens to My Comments?
G. What Should I Consider When Preparing My Comments?
H. Can I Submit Comments After the Public Comment Period Is Over?
I. Can I View Public Comments Submitted by Others?
J. Can I Submit Comments Regarding Sites Not Currently Proposed to the NPL?
III. Contents of This Proposed Rule
A. Proposed Additions to the NPL
B. Status of NPL
IV. Executive Order 12866
A. What is Executive Order 12866?
B. Is This Proposed Rule Subject to Executive Order 12866 Review?
V. Unfunded Mandates
A. What is the Unfunded Mandates Reform Act (UMRA)?
B. Does UMRA Apply to This Proposed Rule?
VI. Effect on Small Businesses
A. What is the Regulatory Flexibility Act?
B. Has EPA Conducted a Regulatory Flexibility Analysis for This Rule?
VII. National Technology Transfer and Advancement Act
A. What is the National Technology Transfer and Advancement Act?
B. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?
VIII. Executive Order 12898
A. What is Executive Order 12898?
B. Does Executive Order 12898 Apply to this Proposed Rule?
IX. Executive Order 13045
A. What is Executive Order 13045?
B. Does Executive Order 13045 Apply to this Proposed Rule?
X. Paperwork Reduction Act
A. What is the Paperwork Reduction Act?
B. Does the Paperwork Reduction Act Apply to this Proposed Rule?
XI. Executive Orders on Federalism
What Are The Executive Orders on Federalism and Are They Applicable to This Proposed Rule?
XII. Executive Order 13084
What is Executive Order 13084 and Is It Applicable to this Proposed Rule?

I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases (42 U.S.C. 9601(23)).

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA,

as amended by SARA. section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), 48 FR 40659 (September 8, 1983).

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as a appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on September 17, 1999 (64 FR 50459).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions. * * *'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to remedy the releases, including enforcement action under CERCLA and other laws.

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance release has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which contamination from that area has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the probelm presented by the release'' will be determined by a Remedial Investigation/Feasibility Study (''RI/FS'') as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the

contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met: (i) Responsible parties or other persons have implemented all appropriate response actions required; (ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or (iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate. As of October 12, 1999, the Agency has deleted 201 sites from the NPL.

H. Can Portions of Sites Be Deleted From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of October 12, 1999, EPA has deleted portions of 16 sites.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) The site qualifies for deletion from the NPL.

Of the 201 sites that have been deleted from the NPL, 192 sites were deleted because they have been cleaned up (the other 9 sites were deleted based on deferral to other authorities and are not considered cleaned up). As of October 12, 1999, there are a total of 670 sites on the CCL. This total includes the 192 deleted sites. For the most up-to-date information on the CCL, see EPA's Internet site at http://www.epa.gov/superfund.

II. Public Review/Public Comment

A. Can I Review the Documents Relevant to This Proposed Rule?

Yes, documents that form the basis for EPA's evaluation and scoring of the sites in this rule are contained in dockets located both at EPA Headquarters in Washington, DC and in the Regional offices.

B. How Do I Access the Documents?

You may view the documents, by appointment only, in the Headquarters or the Regional dockets after the appearance of this proposed rule. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters docket: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202, 703/603–9232. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Regional dockets is as follows:

Barbara Callahan, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Records Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1356

Ben Conetta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4435

Dawn Shellenberger (GCI), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

Joellen O'Neill, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, 9th floor, Atlanta, GA 30303; 404/562–8127.

Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Waste Management Division 7–J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–7570.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; 214/665–7436.

Carole Long, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551–7224.

David Williams, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–SA, Denver, CO 80202–2466; 303/312–6757.

Carolyn Douglas, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/744–2343.

David Bennett, Region 10 (AK, ID, OR, WA), U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop ECL–115, Seattle, WA 98101; 206/553–2103.

You may also request copies from EPA Headquarters or the Regional dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

C. What Documents Are Available for Public Review at the Headquarters Docket?

The Headquarters docket for this rule contains: HRS score sheets for the proposed site; a Documentation Record for the site describing the information used to compute the score; information for any site affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record.

D. What Documents Are Available for Public Review at the Regional Dockets?

The Regional dockets for this rule contain all of the information in the Headquarters docket, plus, the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the Regional dockets.

E. How Do I Submit My Comments?

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section. Please note that the

addresses differ according to method of delivery. There are two different addresses that depend on whether comments are sent by express mail or by postal mail.

F. What Happens to My Comments?

EPA considers all comments received during the comment period. Significant comments will be addressed in a support document that EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What Should I Consider When Preparing My Comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas,* 849 F.2d 1516 (D.C. Cir. 1988)). EPA will not address voluminous comments that are not specifically cited by page number and referenced to the HRS or other listing criteria. EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in EPA's stated eligibility criteria is at issue.

H. Can I Submit Comments After the Public Comment Period Is Over?

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of not delaying a final listing decision solely to accommodate consideration of late comments.

I. Can I View Public Comments Submitted by Others?

During the comment period, comments are placed in the Headquarters docket and are available to the public on an ''as received'' basis. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes.

J. Can I Submit Comments Regarding Sites Not Currently Proposed to the NPL?

In certain instances, interested parties have written to EPA concerning sites which were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

III. Contents of This Proposed Rule

A. Proposed Additions to the NPL

With today's proposed rule, EPA is proposing to add 9 new sites to the NPL; all to the General Superfund Section of the NPL. The sites are being proposed based on HRS scores of 28.50 or above. The sites being proposed in this rule are presented in Table 1 which follows this preamble.

B. Status of NPL

A final rule published elsewhere in today's **Federal Register** finalizes 10 sites to the NPL; resulting in an NPL of 1,221 final sites; 1,062 in the General Superfund Section and 159 in the Federal Facilities Section. With this proposal of 9 new sites, there are now 57 sites proposed and awaiting final agency action, 52 in the General Superfund Section and 5 in the Federal Facilities Section. Final and proposed sites now total 1,278. (These numbers reflect the status of sites as of October 12, 1999. Sites deletions may affect these numbers at time of publication in the **Federal Register**.)

IV. Executive Order 12866

A. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a 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.

B. Is This Proposed Rule Subject to Executive Order 12866 Review?

No, the Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

V. Unfunded Mandates

A. What Is the Unfunded Mandates Reform Act (UMRA)?

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 by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a 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. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

B. Does UMRA Apply to This Proposed Rule?

No, 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 by the private sector in any one year.

This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses

A. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

B. Has EPA Conducted a Regulatory Flexibility Analysis for This Rule?

No. While this rule proposes to revise the NPL, an NPL revision is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the sites in this proposed rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, this proposed regulation does not require a regulatory flexibility analysis.

VII. National Technology Transfer and Advancement Act

A. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

B. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

VIII. Executive Order 12898

A. What is Executive Order 12898?

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

B. Does Executive Order 12898 Apply to This Proposed Rule?

No. While this rule proposes to revise the NPL, no action will result from this proposal that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

IX. Executive Order 13045

A. What Is Executive Order 13045?

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

B. Does Executive Order 13045 Apply to This Proposed Rule?

This proposed rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because the Agency

does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

X. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

B. Does the Paperwork Reduction Act Apply to This Proposed Rule?

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

XI. Executive Orders on Federalism

What Are The Executive Orders on Federalism and Are They Applicable to This Proposed Rule?

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

This proposed rule does not create a mandate on State, local or tribal governments. The proposed rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this proposed rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255 (August 10, 1999),) which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 (52 FR 41685 (October 30, 1987),) on federalism still applies. This proposed rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. This proposed rule will not result in the imposition of any additional requirements on any State, local governments or other political subdivisions within any State. Accordingly, the requirements of section 6(c) of Executive Order 12612 do not apply to this proposed rule.

XII. Executive Order 13084

What is Executive Order 13084 and Is It Applicable to this Proposed Rule?

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not significantly or uniquely affect their communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

TABLE 1.—NATIONAL PRIORITIES LIST PROPOSED RULE NO. 30, GENERAL SUPERFUND SECTION

State	Site name	City/county
CA	Leviathan Mine	Alpine County.
FL	Trans Circuit, Inc.	Lake Park.
LA	Marion Pressure Treating	Marion.
NY	Jackson Steel	Mineola/North Hempstead.
NY	Lawrence Aviation Industries, Inc.	Port Jefferson Station.
PR	Scorpio Recycling, Inc.	Candeleria Ward.
RI	Centredale Manor Restoration Project	North Providence.
SC	Macalloy Corporation	North Charleston.
UT	Intermountain Waste Oil Refinery	Bountiful.

Number of Sites Proposed to General Superfund Section: 9.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

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.

Dated: October 15, 1999.

Timothy Fields, Jr.,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 99–27538 Filed 10–21–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 710

[OPPTS–82053A; FRL–6388–1]

RIN 2070–AC61

TSCA Inventory Update Rule Amendments; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is extending the comment period for the proposed rule to amend the TSCA Inventory Update Rule (IUR) published on August 26, 1999. In response to several requests, the comment period is being extended by 60 days until December 24, 1999. The comment period for the proposed rule was scheduled to close on October 25, 1999. Under section 8(a) of the Toxic Substances Control Act (TSCA), EPA currently requires manufacturers (including importers) of certain chemical substances and mixtures on the TSCA Chemical Substances Inventory to report current data regarding production volume, plant site information, and site-limited status. The proposed rule requires the reporting of additional data that would assist EPA in evaluating potential exposures and risks resulting from industrial chemical operations and commercial and consumer uses of chemical substances. The proposed rule also modifies reporting and recordkeeping requirements, removes one reporting exemption and creates others, and modifies confidential business information (CBI) reporting and retention procedures. Information from the proposed IUR Amendments will help both EPA and the public better identify and mitigate potential exposures and risks associated with TSCA chemicals.

DATES: Comments, identified by docket control number OPPTS–82053, must be received by EPA on or before December 24, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–82053 in the subject line of the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Christine M. Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epa.gov.

For technical information contact: Susan Krueger, Project Manager, Economics, Exposure and Technology Division (7406), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–1713, fax: (202) 260–1661; e-mail: krueger.susan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture or import chemical substances and mixtures currently subject to reporting under the Inventory Update Rule (IUR) at 40 CFR part 710 or manufacture or import inorganic chemical substances. In the past, processors of chemical substances have not been required to comply with the requirements at 40 CFR part 710. The proposed amendments do not change the status of processors under the regulations at 40 CFR part 710. Potentially affected categories and entities may include, but are not limited to:

Category	NAICS	Examples of Potentially Regulated Persons
Chemical manufacturers and importers	325, 32411	Chemical manufacturers (including importers) currently subject to IUR reporting Chemical manufacturers (including importers) of inorganic chemical substances

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed above could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in 40 CFR part 710. If you have questions regarding the applicability of this action to a particular entity, consult the technical person listed under ''FOR FURTHER INFORMATION CONTACT.''

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

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

In addition, electronic copies of this document and various support documents may be accessed at http://www.epa.gov/opptintr/iuramend.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–82053. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as CBI. This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, Rm. NE–B607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

III. How and to Whom Do I Submit Comments?

As described in Unit I.C. of the proposed rule published in the **Federal**

Register of August 26, 1999 (40 FR 46772) (FRL–6097–4), you may submit comments through the mail, in person, or electronically. Please follow the instructions in the proposed rule. Do not submit any information electronically that you consider to be CBI. To ensure proper receipt by EPA, be sure to identify docket control number OPPTS–82053 in the subject line of the first page of your correspondence.

IV. How Should I Handle CBI Information That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified under ''FOR FURTHER INFORMATION CONTACT.''

V. What Should I Consider As I Prepare My Comments for EPA?

EPA invites you to provide your views on the various options proposed, new approaches EPA has not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Tell us what you support, as well as what you disagree with.
6. Provide specific examples to illustrate your concerns.
7. Offer alternative ways to improve the proposed rule or collection activity.
8. Make sure to submit your comments by the deadline in this document.
9. To ensure proper receipt by EPA, be sure to provide the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation, and the appropriate EPA or OMB ICR number.

VI. What Action is EPA Taking?

EPA is extending the comment period for EPA's August 26, 1999 proposed rule (64 FR 46772) to add exposure related information requirements, alter CBI reporting and retention procedures, revise reporting thresholds and exemptions, and make other revisions. EPA proposed these changes pursuant to its authority under TSCA section 8(a).

VII. Do Any Regulatory Assessment Requirements Apply to this Action?

No. This action is not a rulemaking, it merely extends the date by which public comments on a proposed rule must be submitted to EPA on a proposed rule that previously published in the **Federal Register** of August 26, 1999 (64 FR 46772). For information about the applicability of the regulatory assessment requirements to the proposed rule, please refer to the discussion in Unit XI. of that document.

List of Subjects in 40 CFR Part 710

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements.

Dated: October 7, 1999.

William H. Sanders III.

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 99–27678 Filed 10–21–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–292; FCC 99–257]

Broadcast Services; Radio Stations, Television Stations

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: This document solicits comment the establishment of a ''Class A'' Low Power Television (LPTV) service that would afford some measure of ''primary'' station status to qualifying stations that would provide them with a degree of protection against channel displacement.

DATES: Comments are due December 21, 1999 and Reply Comments are due January 20, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Keith Larson, Associate Bureau Chief (Engineering), Mass Media Bureau (202)418–2600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making* in MM Docket No. 99–292, FCC 99–257, adopted September 22, 1999, and released September 29, 1999. The complete text of this *Notice of Proposed Rule Making* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW–A306), 445 12th Street, S.W., Washington, D.C. The complete text of this *Notice of Proposed Rule Making* may also be purchased from the Commission's copy contractor, International Transcription Services (202)857–3800, 1231 20th Street, N.W., Washington, D.C. 20036.

Synopsis of Notice of Proposed Rule Making

I. Introduction

1. By this document we consider additional interference protections for certain stations in the Low Power Television (LPTV) service [1]. At this stage, we believe it is appropriate to consider the creation of a new ''Class A'' LPTV service that would afford some measure of ''primary'' status to qualifying stations. The stability this status could provide to these stations would enhance their ability to furnish valuable service to their communities, including locally produced

[1] The Low Power Television Service (Subpart G of Part 74 of the Commission's Rules) primarily consists of low power television (LPTV) stations and television translator stations. LPTV stations may retransmit the programs of full service television stations and may originate programming. A TV translator station rebroadcasts the programs and signals of a television broadcast station and may originate emergency warnings of imminent danger and, additionally, not more than thirty-seconds per hour of public service announcements and material seeking or acknowledging financial support deemed necessary to the continued operation of the station. Stations in the low power television service are authorized with ''secondary'' frequency use status and, as such, may not cause interference to, and must accept interference from full service television stations and other primary services. Additionally, as the name suggests, LPTV service stations have lower authorized power levels than full service stations. However, unlike full service stations, they are not restricted to operating on a channel specified in a table of allotments. Also, they are not subject to numerous rules applicable to full service stations.

programming. Additionally, it could augment their capacity to obtain financing, to engage in the long-term planning necessary to support the continuation of this service, and to enter the world of digital television. A Class A service could help to preserve LPTV stations that, in some cases, are a community's only local television station. It could also preserve and enhance the increased broadcast ownership diversity resulting from the LPTV service, including significant opportunities for minorities, women and small businesses.

2. The document responds to a petition for rule making filed by the Community Broadcasters Association (CBA).[2] CBA urges the Commission to secure a permanent spectrum home for low power television (LPTV) stations that provide substantial amounts of locally produced programming to their communities, thereby avoiding disruption or even elimination of service due to the emergence of digital television (DTV) and other new primary services.[3] The document seeks comments on creation of a form of primary status for qualifying stations and on the appropriate regulatory framework for a Class A television service.

II. Background

A. The Low Power Television Service

3. The Commission created the low power television service in 1982.[4] In so doing, it noted that the first of its ''decision criteria'' had been the ''public need for program diversity.''[5] Further, it acknowledged the potential for these stations to provide local program service and concluded that the very nature of the service made it likely that LPTV stations would have to be very ''directly responsive'' to the interests of local consumers.[6] Moreover, it deduced that the relatively low construction cost and small coverage area of LPTV stations suited them to programming to smaller communities and discrete groups in larger communities.[7]

4. The Commission, however, also recognized that important spectrum utilization issues were present. Accordingly, it created LPTV as a ''secondary spectrum priority'' service whose members ''may not cause objectionable interference to existing full service stations, and * * * must yield to facilities increases of existing full service stations or to new full service stations where interference occurs.''[8]

5. Since its inception, and notwithstanding its limitations, the LPTV service has grown and is providing significant television service to diverse audiences throughout the country. Currently, there are some 2,200 licensed LPTV stations in approximately 1000 communities,[9] operating in all 50 states. Commenters on the CBA petition point out that LPTV stations provide a valuable service. They say that, due to their very nature, LPTV stations can be fit into areas where a higher power station cannot be accommodated in the Table of Allotments[10] and, in many cases, are the only television station in an area providing local news, weather and public affairs programming.[11] Additionally, even in well-served markets, LPTV stations can and do provide service to the residents of discrete geographical communities within those markets.[12] Commenters say that many stations air programming, often locally produced, to residents of specific ethnic, racial and interest communities within the larger area, including airing programming in foreign languages.[13]

6. The LPTV service has also significantly increased the diversity of broadcast station ownership. Stations are operated by such diverse entities as community groups, schools and colleges, religious organizations, radio and TV broadcasters, and a wide variety of small businesses. The service has provided first-time ownership opportunities for minorities and women.[14]

7. The low power television service also includes television translator stations, which rebroadcast the programs of full service TV stations. Currently, there are approximately 4,900 licensed TV translators;[15] most operate in the western mountainous regions of the country. Translators deliver free over-the-air television service, mostly to rural communities that cannot directly receive the nearest TV stations because of distance or intervening terrain obstructions. They also provide ''fill-in'' service to terrain-obstructed areas within a full service station's service area.

8. The pursuit of other compelling public interest goals may negatively affect the service of LPTV stations in certain communities.[16] Specifically, to facilitate the transition from analog to digital television, the Commission has provided a second channel for each full service television licensee in the country that will be used for digital broadcasting during the period of conversion to an all-digital broadcast service.[17] At the same time, the amount of radio frequency spectrum allocated to broadcast television is being reduced.[18]

---

[2] The petition was filed on September 30, 1997, and amended on March 18, 1998. On April 21, 1998, the Commission gave public notice of the filing of the petition and amendment (RM–9260) and sought public comment. Public Notice (No. 82996), ''Petition for Rulemaking Filed for ''Class A'' TV Service'' (RM–9260), April 21, 1998.

[3] On February 2, 1999, legislation was introduced in the U.S. House of Representatives by Representative Norwood (R–GA), *et al.*, the ''Community Broadcasters Protection Act of 1999'' (H.R. 486), proposing a primary Class A service for qualifying LPTV stations. On April 13, 1999, a hearing was held before the House Subcommittee on Telecommunications, Trade and Consumer Protection on ''The Regulatory Classification of Low-Power Television Stations.'' On August 5, 1999, the ''Community Broadcasters Protection Act of 1999'' (S. 1547) was introduced in the U.S. Senate by Senator Burns (R–MT), *et al.* The legislative proposals are similar in many respects to the CBA petition and different in others.

[4] Report and Order in BC Docket No. 78–253, 51 R. R. 2d 476 (1982).

[5] *Id.* at 484, see also Notice of Inquiry in BC Docket 78–253, 68 FCC 2d 1525, 1536 (1978).

[6] *Id.* at 484–485.

[7] *Id.* at 485.

[8] *Id.* at 486; see also *id.* at n. 23. ''[Because] it is integral to the concept of a secondary service that it yield to a mutually exclusive primary service, we shall not take low power stations into account in authorizing full service stations, and we urge low power applicants to consider this fact when they select channels.''

[9] Public Notice, ''Broadcast Station Totals as [of] August 12, 1999.''

[10] See, *e.g.*, comments of AirWaves, Inc. at 1. All references to comments and reply comments pertain to comments filed in response to Public Notice (No. 82996).

[11] Comments of Free Life Ministries, Inc. at 1.

[12] In its comments, D Lindsey Communications notes that its LPTV station is the only station providing local news for residents of Temecula and Murrietta, CA, both of which are within the Los Angeles DMA. Comments of D Lindsey Communications at 1. See also comments of Engle Broadcasting at 1–2.

[13] See, *e.g.*, comments of Community Broadcasting Company of San Diego at 2; comments of Hispanic Broadcasters of AZ, Inc. at 1; Channel 19 TV Corp. at 2; comments of ZGS Broadcast Holdings, Inc. at 1, comments of National Minority T.V., Inc at 1; comments of Liberty University, Inc. at 2; comments of Debra Goodworth, Turnpike Television at 1–2.

[14] First Report and Order in MM Docket No. 93–114, 9 FCC Rcd 2555, 59 FR 31552, June 20 1994.

[15] Public Notice, ''Broadcast Station Totals as [of] August 12, 1999.''

[16] TV translator stations may be affected to a lesser extent, given that most are distantly located from full service stations or are terrain-shielded from them. For instance, in the DTV proceeding the Commission estimated that approximately 55 to 65 percent of existing LPTV stations and 80 to 90 percent of all TV translators would be able to continue to operate and that operations in or near major urban areas would be most affected. Sixth Further Notice of Proposed Rule Making, MM Docket No. 87–268, 11 FCC Rcd 10968, 61 FR 43209, August 21, 1996.

[17] There are currently 1,599 such stations, both VHF and UHF, commercial and noncommercial. Public Notice, ''Broadcast Station Totals as [sic] August 12, 1999.''

[18] See Section 3004 of the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251,

The conversion will eventually accommodate more television stations in the reduced spectrum. In the meantime, however, numerous LPTV stations will be displaced.[19] Many will have to find new channels; some will be unable to do so and will have to cease operating.[20] As we have stated, revisions to the DTV Table to protect or otherwise accommodate LPTV stations ''would, by their very nature, pose restrictions on our choice of allotments for full service DTV stations.'' [21]

B. Current Measures To Ameliorate Station Displacement

9. In recognition of the severe consequences the transition to digital television will have on many stations in the LPTV service, the Commission took a number of steps intended to ameliorate those consequences. Despite all of the measures that we have taken to mitigate the impact of the DTV transition on stations in the LPTV service that transition will have significant adverse effects on many stations, primarily LPTV stations operating in urban areas where there are few, if any, available replacement channels. Although we have previously rejected pleas by low power advocates to grant them full primary status, we have not explored the option of granting something less than full primary status, such as the Class A status suggested by CBA. As we noted above, the greater stability that Class A status could provide such stations, many of which are small businesses, may enable them to make long term commitments to continuation of service, expansion of service (including digital operations), station upgrades and program production and purchases. Moreover, the comments filed in response to the CBA petition indicate that such status would be of tremendous benefit in obtaining the financial backing necessary to these ends. Finally, such status could remove the cloud over qualifying LPTV service stations that, even if they were to weather the DTV transition and possible displacement, they could be displaced or eliminated at any time by additional DTV stations by new entrants or by future primary services. On the other hand, Class A stations need not threaten the conversion to DTV because their ''less than full'' primary status could be tailored with appropriate safeguards. Accordingly, we herein consider whether and how to craft a Class A service with some measure of primary status for qualifying stations, and we seek comment in this regard.

C. The CBA Petition

10. On September 30, 1997, the Community Broadcasters Association filed a Petition for Rule Making requesting that Part 73, Subpart E of the Commission's Rules be amended to create a Class A low power television service that would afford primary protection status to the members of the Class; the petition was amended on March 18, 1998.[22] CBA proposed that Class A stations be regulated as television broadcast stations, except for rules related to station power or the manner in which the stations were initially authorized as LPTV stations.[23] Initial applications to attain Class A status would have to be filed within one year of the effective date of the rules for the new service. These applications would be considered minor change applications, not subject to the filing of competing applications. They could not propose a channel change or facilities changes that would extend a station's currently protected service area. Under the proposal, an applicant would be required: (1) To demonstrate that for the period of 3 months immediately preceding submission of the application, its LPTV station complied with the minimum operating schedule for TV broadcast stations (47 CFR 73.1740) and broadcast not less than 3 hours in each calendar week of locally produced programming, (2) to show that the Class A station would not cause interference within the Grade B contour of any television station operating on a channel specified in the TV Table of Allotments (47 CFR 73.606(b)) or the DTV Table of Allotments (47 CFR 73.622(b)) as of the date of filing of the Class A application or within the protected contour of any prior-authorized LPTV or TV translator station, (3) to certify that on and after the filing of the application that its station operated and would continue to operate in compliance with the pertinent regulations of Part 73. Class A stations would be protected from interference within their principal service contours, could apply for a change of channel to resolve interference conflicts without being subject to competing applications, could seek interference-free operations at certain higher levels of effective radiated power (''ERP'') than now permitted in the LPTV service, and could apply to convert to digital operation on their existing channels or seek authorization on an additional channel for this purpose where interference standards could be met.

11. On August 27, 1998, CBA filed a ''Report of Ex Parte Communication'' (*ex parte* letter) indicating that, as a result of conversations with Mass Media Bureau personnel, it would clarify some parts of its proposal. Principally, CBA clarified that Class A television stations should not be permitted to cause interference with DTV stations within service areas that replicate their NTSC service areas, even if DTV stations were to commence operation at less than the allotted transmission parameters; that the protected service area for Class A stations be defined in the same manner as that for LPTV stations (section 74.707(a) of the Commission's Rules) or the equivalent coverage for digital operations; that its proposal to exempt Class A stations from section 73.622 of the Commission's Rules was intended to permit stations to operate digitally without being limited to channels listed in the DTV Allotment Table (other parts of that rule, such as computations of distance, might be applicable to Class A.)

approved August 5, 1997; see also Report and Order in ET Docket No. 97–157 12 FCC Rcd 22953, 63 FR 06669, February 10, 1998; see also Sixth Report and Order in MM Docket No. 87–268, 12 FCC Rcd 14588, 62 FR 26684, May 14, 1997, recon. granted in part, denied in part Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order in MM Docket No. 87–268, 13 FCC Rcd 7418, 63 FR 13546, March 20, 1998, second recon. granted in part, denied in part Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders in MM Docket No. 87–268, 64 FR 4322, January 28, 1999.

[19] For example, approximately 260 LPTV stations operate on a channel from channel 60–69 and are required by law to vacate these channels by the end of the DTV transition period or earlier if they cause interference to primary services using these channels.

[20] As an indication of the extent of potential displacement, on June 1, 1998, 548 LPTV stations and 472 television broadcast translator stations filed ''displacement relief'' applications for operation on a different channel. Of these 303 applications were filed by stations on channels 60–69. These consisted of 116 LPTV and 187 translator applications. Over 280 applications in over 100 groups were mutually exclusive and the parties were given time in which to try and resolve their situations. As a result, the number of mutually exclusive applications has been reduced to 98 in 40 groups. Since then, we have received other displacement relief applications, bringing the total received to 814 LPTV and 772 TV translator applications; about 750 of the displacement relief applications have been granted.

[21] Memorandum, Opinion and Order on Reconsideration of the Sixth Report and Order in MM Docket No. 87–268, *supra* at 7462.

[22] All references to proposed Part 73 amendments, unless otherwise specified, are to the amended rules as set forth in Appendix A to the March 18, 1998, ''Amendment to Petition for Rule Making.''

[23] For example, Class A stations would not be confined to use of channels designated in the analog or digital TV allotment tables, nor would they be subject to analog full service TV minimum distance separations, certain DTV technical application evaluation criteria, or the Commission's multiple ownership and cross ownership restrictions.

D. Comments on the CBA Petition

12. More than sixty comments were filed in response to the CBA's rulemaking petition. A large majority of the commenters favored the creation of a Class A service, pointing to the service LPTV stations now provide, especially local programming, as well as programming designed for niche markets and racial and ethnic minorities.

III. Discussion

13. We seek comment on whether and how to create a Class A primary television service for qualifying stations in the LPTV service. We tentatively conclude that the local service they provide their audiences warrants protection to the extent possible, and we seek comment on this tentative conclusion.

14. We also wish to consider if there are circumstances under which it would be appropriate to extend opportunities for Class A status to certain television translator stations. Translator stations deliver television programming to remote communities and are often a community's only means of receiving free off-air television programming, particularly at locations where the signals of the nearest TV stations are blocked by mountainous terrain.[24] The National Translator Association believes that a translator should be able meet a minimum local programming qualification for Class A status by rebroadcasting the local programming of a full service station within that station's Grade B contour. We seek comment on this proposal. We also ask if there are other situations that would warrant Class A status for translators; for example, translators that provide the only television service to a community.

15. Altering the status of LPTV at this highly fluid juncture in the transition to digital television would require a careful balancing of many competing considerations. Perhaps most critically, we must ensure that the transition of full power television to digital broadcasting is not undermined. We must ensure our capacity to accommodate necessary adjustments in full power stations' operating parameters as digital service is being implemented. Therefore, the details and precise characteristics of any Class A low power service, particularly as to interference with full power stations, would have to be carefully crafted if our goals of a stable, protected low power service and a supple full power digital environment are all to be compatible and attainable. We are also concerned that the creation of a Class A LPTV service not unduly disrupt important services provided by secondary service facilities such as television translators, including public translators and translators that serve rural areas. We turn now to these matters.

A. Defining Interference Protection Rights and Responsibilities

16. The most important question before us is what does ''primary'' service mean in this context? To what level of protection should Class A stations be entitled? This issue is the most problematical issue to be resolved. Significant DTV issues include protection to allotted and authorized service, needs of DTV stations to make adjustments to correct unforeseen problems, need to accommodate DTV stations allocated on non-core channels, maximization of DTV service areas, and requests for DTV allotments by new entrants. There are also NTSC TV protection issues, which involve pending applications for new stations and petitions to amend the TV allotment table, as well as pending and future facilities modification requests.

1. DTV Protection Issues

17. *Service Replication.* We tentatively conclude that Class A status cannot be permitted to interfere with DTV broadcasters' ability to replicate insofar as possible their NTSC service areas, a primary goal in the DTV proceeding.[25] We seek comment on this tentative conclusion. At a minimum, we intend for Class A stations to protect the service areas resulting from the DTV allotment parameters and any additional DTV service authorized by construction permit or license or proposed in a DTV construction permit application before the filing of a Class A TV application. As stations under Part 73 of our rules, we believe it would be appropriate for Class A applicants to determine noninterference to DTV in the same manner as applicants for full service NTSC facilities. In this manner, Class A facilities would not be permitted to increase the population receiving interference within a DTV broadcaster's replicated service area and any additional area associated with its DTV license or construction permit. We would not permit Class A stations to cause ''*de minimis*'' levels of interference to DTV service.[26] Criteria for protecting DTV service are given in sections 73.622 and 73.623 of our rules and in OET Bulletin 69.[27] We seek comment on these proposals.

18. *Allotment Adjustments.* There are other DTV issues to be worked out in this proceeding. Channel changes and adjustments to station facilities may be necessary to correct unforeseen technical problems among DTV stations. While we have confidence in our DTV Table, situations may arise which warrant corrective action. Any requirement to protect Class A stations must not restrict our flexibility to make necessary adjustments to DTV allotment parameters, including channels changes. Accordingly, we propose that Class A primary status include this ''safety net'' provision.

19. We stated in the DTV Sixth Report and Order that we would review all requests for modification of the DTV Table for their impact on LPTV stations and ''strongly advised'' industry coordinating committees to consider LPTV and TV translator stations in developing proposed modifications to the DTV Table and to avoid impact on such stations wherever possible.[28] We propose that this provision also extend to Class A stations. Commenters should address the extent of protection Class A stations should afford to and receive from full service DTV stations.

20. *Service Area Increases.* Another issue concerns ''maximization'' of DTV service; *i.e.*, facilities increases to enlarge DTV service areas beyond NTSC-replicated service areas. In the DTV proceeding, we permitted

[24] Translator licensees could elect to become LPTV operators and adapt their operations so as to meet any qualifications we might establish for Class A status.

[25] Service areas to be replicated approximate the areas within the NTSC Grade B service contours. DTV channels and associated allotment powers and antenna heights were chosen to achieve service area replication insofar as possible. Allotment parameters are specified in Appendix B of the second DTV reconsideration order. (Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders in MM Docket No. 87–268, 64 FR 4322, January 28, 1999.

[26] In the DTV proceeding, we permitted DTV stations in the initial allotment table to decrease by two percent the populations served by NTSC and other DTV stations, not to exceed a total reduction of more than ten percent. Unlike this DTV allowance, applicants seeking facilities modifications of full service NTSC stations similarly may not cause any additional interference to DTV service. See Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order in MM Docket No. 87–268, 13 FCC Rcd 7418, 63 FR 13546, March 20, 1998.

[27] OET Bulletin 69, Longley-Rice Methodology for Evaluating TV Coverage and Interference (July 2, 1997), available at FCC Internet address http://www.fcc.gov/oet/info/documents/bulletins/#69.

[28] DTV Sixth Report and Order at Paragraph 182. See also the Notice of Proposed Rule Making in ET Docket No. 99–34, ''An Industry Coordination Committee System for Broadcast Digital Television Service'', FCC 99–8, 64 FR 06296 (February 9, 1999), at Paragraph 4. Paragraph 16 of this Notice seeks comment on whether coordinating committees should assist with coordination of certain LPTV and TV translator activities, including stations affected by the implementation of DTV.

broadcasters to request facilities increases that would enable them to provide service to larger audiences, and this was a partial basis for establishing the *de minimis* interference allowance. We seek comment on whether a Class A station should be required to yield to subsequently increased or relocated facilities of DTV stations or should have to protect a DTV station's ability to maximize its facilities. Conversely, should the service areas of authorized or proposed Class A facilities be protected against subsequent DTV application proposals to increase or modify service areas beyond the areas produced by a station's DTV allotment parameters?

21. *New DTV Entrants.* We seek comment on whether existing Class A stations should be protected by new entrants seeking new DTV channel allotments and whether Class A stations should be considered as primary television broadcast stations with respect to future primary services; *i.e.*, their operations on ''core'' channels (channels 2–51) could not be displaced by future primary services.[29] Without protection against displacement by future primary services, these stations would still lack the certainty and stability that they seek and that we tentatively believe are important to their continued viability as significant sources of local programming.

22. *Hybrid Primary Status.* We seek comment on whether Class A service should have a hybrid primary status that protects existing service while protecting Class A stations against new DTV and future primary services on core spectrum. In this instance we believe that consideration should be given to the preservation and stability of an existing service to the public, for which investments have already been made. We seek comment on whether Class A station licensees should be afforded the certainty that their stations will not be vulnerable to displacement by new and future DTV stations or other primary services.

23. We seek comment on these proposals. Should interference protection by DTV allotment petitions for new DTV service be given to earlier-filed Class A station applications, in addition to authorized stations? Should distance separations be used to protect Class A stations? If so, which distances should apply? Alternatively, should the service contours of Class A stations be protected, and are the protection criteria in section 73.623(c) of our rules suitable for this purpose?

2. NTSC TV Protection Issues

24. *Authorized Service.* With regard to NTSC television, we agree with CBA that applicants for Class A stations should protect previously authorized service within a station's Grade B contour in the manner given in section 74.705 of the LPTV rules. LPTV stations have been engineered to avoid causing interference to the Grade B contour of full-service stations, often using directional antennas to avoid such interference and, for this reason, continuation of the current standards would appear to be more appropriate than a different form of interference protection, such as minimum distance separations between stations. We believe that Class A station applicants should be permitted to utilize all means for interference analysis afforded to LPTV stations in the DTV proceeding, such as use of the Longley-Rice terrain-dependent propagation model. To provide additional stability, we would consider not imposing a requirement that Class A stations protect NTSC stations at locations beyond their Grade B contours wherever their signals are regularly viewed.[30]

25. *Pending Application and Allotment Proposals for New NTSC Stations.* Additionally, we have questions concerning protection of pending application and allotment proposals for new NTSC full power stations. Altogether, these proposals could result in approximately 250 new TV stations, most located in the eastern half of the country or in the western coastal region.

26. We have previously stated that we would seek to accommodate applicants and petitioners who have pending proposals for channels 60–69, none of which can be granted due to the reallocation of these channels, or freeze waivers that conflict with DTV stations or allotments.[31] We stated that these parties will be given an opportunity to seek replacement channels below channel 60, where this is possible, and that the details of the amendment opportunity period would be announced by public notice. This public notice will be issued shortly.

27. Releasing the NTSC amendment opportunity Notice soon after the adoption of the Class A Notice of Proposed Rule Making will assist us in gauging the impact of NTSC channel changes on LPTV and TV translator stations and, thus, the extent to which new NTSC service would limit opportunities for Class A service. It is not possible to approximate the magnitude of risk without first evaluating the NTSC channel change proposals filed in the amendment period. Based on our experience in developing the DTV allotment table, we believe it may be difficult, if not impossible, for many NTSC applicants and petitioners to find replacement channels consistent with our interference protection requirements. It is also likely, however, that many of the NTSC new-station proposals will no longer be pending if and when we begin authorizing Class A service. Our proposal that Class A applicants protect authorized NTSC stations would apply to any now-pending station proposals that would be earlier-authorized. We invite comment and analyses on the extent to which new NTSC service could affect the viability of a new Class A service.[32]

28. There is also the question of interference protection rights for any NTSC application and allotment proposals still pending at the time Class A applications are filed, if we were to adopt a Class A service. There are NTSC station proposals in applications that have remained pending for several years through no fault of the applicants.[33] Many other applications were submitted in response to our decision in the DTV proceeding to permit a last filing opportunity for new-station proposals that were then already under development.[34] We also maintained and

[29] Section 3003 of the Balanced Budget Act of 1997 mandates that the Commission auction recaptured broadcast channels between channels 2–59. Citation at footnote 18, *supra*.

[30] 47 CFR 74.703(b). The Report and Order establishing the LPTV service allows consideration of certain mitigating circumstances in the event of interference caused beyond a TV station's Grade B contour; for example, the programming of the signal being degraded can be received from another station or interference occurs due to anomalous reception conditions such as a viewer's use of a taller than normal outdoor receiving antenna. Report and Order in BC Docket No. 78–253, *supra*.

[31] See Reallocation of Television Channels 60–69, the 746–806 MHz Band, Report and Order, 12 FCC Rcd 22953, 63 FR 06669 (1998) and see also Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders, 64 FR 4322, January 28, 1999.

[32] A number of mutually exclusive LPTV and TV translator applications, including displacement relief applications, will participate in the September broadcast auction. We strongly advise applicants to consider the likelihood of any channel displacement that could result from the authorization of new NTSC stations or channel changes by applicants and petitioners eligible to file in the NTSC amendment opportunity window.

[33] Processing of these applications was frozen as the result of a court decision invalidating the Commission's comparative policy in *Bechtel* v. *FCC*, 10 F.3d 875 (D.C. Cir. 1993). Some of these pending applications have since been involved in settlements among the parties.

[34] In the DTV proceeding, we established July 25, 1996 as the last date for filing rule making petitions

Continued

protected vacant NTSC allotments outside of the freeze areas that are the subject of pending applications, and avoided creating DTV allotments that would conflict with these proposed new NTSC allotments.[35] And, as we noted above, new NTSC service would increase competition and enhance broadcast diversity.

29. We also recognize that hundreds of new NTSC full power stations could potentially jeopardize the continued operations of prospective Class A LPTV stations, perhaps including LPTV stations that began operating long before many of the NTSC proposals were even conceived. Failure to protect Class A stations from later-authorized new-station NTSC proposals could affect the extent of relief and stability offered by a Class A service, thereby minimizing its potential value to viewers. The number of mutually exclusive LPTV and translator displacement applications filed to date suggests that additional replacement channels may not be available in some areas.

30. We seek comment on how we should balance this difficult policy issue. Should Class A applicants be required to protect new NTSC TV station proposals in pending applications or allotment petitions? If not, should operating Class A stations be required to protect the actual service of later-authorized facilities? Alternatively, should applicants and allotment petitioners for new NTSC stations be required to protect earlier-authorized Class A stations? Are there measures we could adopt that, in some instances, could accommodate both new NTSC stations and prospective Class A stations? We invite comments on this difficult issue.

31. *NTSC Facilities Modifications.* An issue also arises regarding Class A protection rights and responsibilities with respect to NTSC TV facilities modifications (minor changes); for example, stations site relocation or increased power. Considering that both facilities would be ''primary'' under part 73 of our rules, we are inclined to favor a ''first-in'' approach for affording protection priority. Under this approach, protection rights between proposed NTSC TV facility modifications and initial and modified Class A stations would be given to the earlier-filed application. We would be disinclined to consider NTSC minor change and Class A applications to be mutually exclusive in the event one was filed before grant of the other. Priority to the earlier-filed application in such situations could result in much faster authorization of service. We invite comments on this proposal and whether the triggering event for interference protection rights should be the application filing date. We also ask in what manner NTSC proposals should protect earlier-filed Class A proposals. Should such protection be based on minimum distance separations between the stations or should such NTSC station proposals be required to provide contour protection to Class A stations in the manner that LPTV stations protect NTSC stations?

3. LPTV and TV Translator Station Protection Issues

32. We believe that Class A stations should protect the service contours of previously authorized LPTV and TV translator stations and must continue to accept interference from such stations. In this regard, we note that any ''primary'' service classification that would be given Class A stations would be a hybrid of current concepts of primary and secondary services. This is because we agree with CBA that Class A stations should have to protect existing LPTV and translator stations, which would not be the case with a full primary service. With this hybrid, Class A stations could have primary status with regard to translator and other secondary service applications filed in the future but not against existing secondary facilities. We envision carrying over the current contour protection standards (section 74.707 of the LPTV rules) for interference protection among Class A stations and also between Class A stations and LPTV and TV translator stations; *i.e.*, Class A stations would continue to provide the same protection to translators and non-Class A LPTV stations as they did when regulated under part 74. LPTV and translator stations would protect previously authorized Class A stations in the same manner. We further propose that Class A, LPTV and TV translators licensees, permittees and applicants be permitted to negotiate interference agreements in the manner now permitted in the LPTV service. Inasmuch as Class A stations would come from the LPTV service (at the least the initial stations), the transition to Class A would appear to be the least disruptive by continuing the use of LPTV protection standards.

33. We invite comments as to how these standards should be applied. Should applications to modify Class A facilities be required to protect previously filed LPTV and TV translator applications? Should applications for new stations and major changes in the two services be filed in the same windows and participate in the same auctions—excluding the initial applications for Class A status of stations that were first authorized in the LPTV service? What criteria should govern interference protection to and from digital Class A stations? In this regard, would it be appropriate to use the protection ratios applicable to DTV station facilities modifications?[36]

4. Land Mobile Radio and Other Services

34. As indicated in the comments, land mobile radio services, including public safety services, now operate on designated channels in the channel 14–20 band in several major cities.[37] Public safety services will also be operating on reallocated TV channels 63, 64, 68 and 69 and other yet to be determined primary services will eventually occupy the remaining spectrum from channel 60 to channel 69.[38] Congress has mandated that all broadcast operations on channels 60–69 cease at the end of the DTV transition period.[39] In reply comments, CBA indicates that compliance with Part 73 rules would ensure protection to land mobile operations on channels 14–20. We concur that spectrum allocated for land mobile operations and authorized land mobile service should continue to be protected, and we propose to apply to Class A stations the protection requirements currently contained in section 74.709 of the Commission's Rules. We also would continue the requirements in this rule concerning protection of the Off Shore Radio Service in the Gulf of Mexico region.[40] Finally, we are inclined to carry over to the Class A service the ''earliest user'' provisions for protecting cable television and the other services listed in section 74.703(d), to which we would add ''earlier used'' TV translator input

to add new channel allotments to the TV Table of Allotments and September 20, 1996 as the last date to file applications for new NTSC TV stations (except for applications filed in response to application cutoff lists). See Sixth Further Notice of Proposed Rulemaking in MM Docket No. 87–268, 11 FCC Rcd 10968, 61 FR 43209 (1996).

[35] Sixth Report and Order in MM Docket No. 87–268, *supra*, at paragraph 112.

[36] 47 CFR 73.623(c).

[37] See 47 CFR 74.709.

[38] See generally Report and Order in ET Docket No. 97–157, 12 FCC Rcd 22953, 63 FR 06669 (1998), recon den. Memorandum Opinion and Order in ET Docket No. 97–157, FCC 98–261, 63 FR 63798 (1998).

[39] See section 3004 of the Balanced Budget Act of 1997, *supra* at footnote 20.

[40] Section 74.709(e) of the Commission's Rules provides that LPTV or TV translator applications for channels 15–18 will not be accepted for specified locations in the area of the Gulf of Mexico.

channels. We invite comment on these matters.

5. Class A Protected Service Area

35. LPTV stations protect other LPTV and TV translator stations to the following signal contours: 62 dBu for stations on channels 2–6, 68 dBu for stations on channels 7–13, and 74 dBu for stations on channels 14 and above, in combination with the Commission's F(50,50) propagation curves.[41] We find merit in continuing for Class A television the protected areas now afforded LPTV stations. This would fit well with our primary purposes of preserving existing service provided by LPTV stations and minimizing disruption or preclusion of other services. We have no readily available contour values for digital stations other than those values that define DTV noise-limited service: 28 dBu for channels 2–6, 36 dBu for channels 7–13, and 41 dBu for channels 14 and above, in combination with the locations of the predicted F(50,90) field strength.[42] We invite comment on the protected service area of Class A stations and, in particular, on whether other field strength values might be better suited for analog and digital Class A service.

B. Class A Eligibility

36. *Opportunity Period to Apply for Class A Status.* Under its proposed section 73.627(a), qualifying stations in the LPTV service would be able to apply for Class A status only within one year after the effective date of the rules adopting a Class A service. Some commenters object to this aspect of the proposal and believe that Class A eligibility ought to be ongoing as LPTV stations become qualified. On the one hand, we believe that there may be practical limits on the number of LPTV stations that could become Class A stations. Based on our findings in the DTV proceeding, we believe there is insufficient spectrum to provide primary status on a wholesale basis to the more than 2,200 LPTV stations. On the other hand, is it unduly restrictive to limit the opportunity to convert to Class A status to only those stations that could qualify in the twelve month period following conclusion of this proceeding, ignoring other LPTV stations that provide similar local service but at a later date? Accordingly, we seek comment on the correct balance to strike between these competing considerations.

37. *Qualifying Criteria.* Another issue is the qualifying criteria for Class A status. We seek comment on whether Class A applicants should be required to meet the definition of ''Small Business''[43] and provide a certain amount of local programming as more fully discussed below. We note that many LPTV stations operate as small businesses and that this would be consistent with our ongoing obligation to consider barriers affecting small businesses (for example, in the areas of spectrum and financing).[44] Commenters should address whether broader service eligibility criteria are needed to afford Class A opportunities to other types of LPTV licensees, such as educational organizations.

38. CBA proposed that Class A applicants be required to show that for the three months preceding filing they have (1) provided three hours per week of programming produced within the city grade service contour of the station, or produced within the city grade service contour of any of a group of commonly controlled stations operating in contiguous or closely grouped areas that carry common local or specialized programming not otherwise available to their communities and (2) have complied with the minimum operating schedule required for television stations.

39. Given the benefits that would accrue to an LPTV station converting to Class A status, and the difficulty in balancing the stability of qualifying LPTV stations with the preclusive impact on other services, we seek comment on whether these proposals are appropriate or whether more stringent or well-defined qualifications would be in order. For example, is ''locally produced'' too vague a criteria, as opposed to programming aired live or filmed in the community? We ask commenters to address this question. Should we require that some or all of the qualifying programming be informational in nature? In this regard, is it sufficient to rely on applicants' certifications of compliance with pertinent content regulations applicable to full service stations, also proposed by the CBA? Is three hours per week out of a potential 168 hours of broadcasting per week sufficient or should we require more (*e.g.*, a minimum of seven hours per week or at least one hour per day of locally originated programming?) Should repeated programming or locally produced commercials count? Should local production requirements continue after the application has been filed? To ensure continued eligibility for Class A status, should licensees be required to certify annually as to their compliance with the local programming, children's informational programming and commercialization regulations and minimum operating hours? If a Class A station is to be sold, should the buyer be required to certify continued compliance with these provisions? Is three months a sufficient period in which to determine the commitment of an LPTV station to local origination to warrant awarding it Class A status? Are there alternative, possibly more objective, criteria that we could use to determine which LPTV stations have made particular efforts to respond to the needs of their communities so as to justify an upgrade to Class A status? Would signal coverage or audience ratings provide such criteria?[45] Is there some other qualification criteria that would not involve the Commission in content regulation?

40. Statutory requirements that now apply to LPTV stations must also apply to Class A stations; for example, the prohibitions on the broadcasting of obscene material. In creating the LPTV service, the Commission determined that the ''equal time'' and ''lowest unit charge'' provisions in sections 312(a)(7) and 315 of the Communications Act would apply to LPTV stations ''to the extent their origination capacity permits * * * [T]he reasonable requests of legally qualified candidates for federal elective office who seek to purchase reasonable amounts of time or respond to their opponents messages must be acceded to, so long as they provide program material that is compatible with the station's origination equipment.''[46] We believe that these statutory provisions should apply to all Class A stations, which, we expect, would be equipped with or have access to the necessary origination equipment.

41. Are there part 73 rules with which Class A stations should not have to

[41] 47 CFR 74.707(a).

[42] 47 CFR 73.622(e).

[43] The general definition of the term ''small business'' is given in the Initial Regulatory Flexibility Analysis, *infra*.

[44] Under section 257 of the Telecommunications Act of 1996, the Commission is required to identify and eliminate ''market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and informational services * * * and must promote the policies and purposes of this Act favoring diversity of media voices, vigorous economic competition, technological advancement, promotion of the public interest, convenience and necessity.'' See Telecommunications Act of 1996, Pubic Law 104, section 257, 110 Stat. 56 (1996).

[45] We realize that, often, LPTV stations are not rated by national audience rating services. This would not, however, preclude an LPTV licensee desiring Class A status from undertaking its own study of audience share or public acceptance.

[46] Report and Order in BC Docket No. 78–253 at para 105. Citation given in footnote 5, *supra*.

comply, including certain rules identified in the CBA petition or others such as the public inspection file [47] and main studio rules? [48] If we do not apply the public inspection file rule to Class A stations, should we nevertheless apply the issue responsive programming requirement inherent in itto Class A licensees? Should Class A stations have to comply with the part 73 requirements for informational and educational children's' programming [49] and the limits on commercialization during children's programming? [50] Are there current LPTV rules in part 74, other than interference protection provisions, which should be carried over to a Class A service? Finally, what process should we use for Class A licensees who wish to revert to LPTV status?

C. Class A Applications

42. *Initial Class A Licenses.* Although CBA proposed that initial applications for Class A status should not include changes in channel or facilities changes that would increase a station's coverage area, that initial Class A applications not be subject to the filing of mutually exclusive applications, and that Class A applicants be allowed to pursue a changes of channel or extensions of coverage area in separate applications filed simultaneously with initial Class A status applications, we do not believe that applicants should be permitted to file Class A facilities modification applications at the same time. The authorization process would be quicker and less complicated if modification applications were filed only after Class A status had been initially authorized. We therefore seek comment on whether initial Class A applications should be limited to the conversion of existing facilities to Class A status, with no accompanying changes in those facilities. Moreover, by protecting all existing facilities, including those of LPTV and translator stations, there should be no possibility of mutual exclusivity between or among Class A conversion applications. Accordingly, we propose that initial Class A applications be filed as ''minor changes'' and be processed in a manner consistent with such status.

43. We propose that all Class A applications would be filed on FCC Form 301, including all required exhibits. In the interest of streamlining the process, we seek comment on whether certifications of compliance with filing requirements would suffice in lieu of application exhibits? Should applicants certify that their stations comply with relevant interference standards in lieu of detailed analyses? Should a special application form be developed to expedite the process? Development of a new form for Class A TV could help to expedite application processing. In this regard, we contemplate that, consistent with our streamlining actions,[51] we would require electronic filing of Class A applications irrespective of the particular form to be used.

44. *Class A Facilities Changes.* The definition of major and minor facilities changes is another important issue to be considered. The LPTV service rules define ''minor'' changes to be changes to existing facilities such as an antenna site relocation of less than 200 meters or, more generally, any changes (other than a channel change) that do not extend a station's protected signal contour in any direction.[52] This definition has ensured that LPTV minor change applications are not mutually exclusive with other applications. However, it has often hindered stations from making desired or needed changes such as power increases, antenna changes, or site relocations. These changes often must be requested in application filing windows and are subject to competing mutually exclusive applications and the auction process. As a result, stations are finding it difficult to improve their facilities or respond to urgent situations, such as loss of their transmitter site. Stations with critical needs have been forced to seek operation under special temporary authority.

45. We agree that the current minor change provisions in the LPTV service may be too restrictive. We seek a ''minor change'' definition that would permit additional flexibility to change facilities, including changes to improve coverage, but also would assure that such changes would not cause interference to existing service. As one way of striking a balance, we could routinely grant Class A facilities changes that meet the current LPTV definition, but permit other more expansive changes on a first-come first-served basis provided the proposed facilities would not conflict with previously authorized or proposed facilities. Under this approach, Class A stations could seek authorization for increased power, up to the limits of the service, outside of the window and auction procedures, provided their proposals met all interference protection requirements. This approach would be more consistent with the minor change provisions for full service radio and TV stations, and we propose it for Class A stations.[53]

46. One important distinction between full power TV service and the proposed Class A service exists, however, which may warrant a somewhat different process for Class A modifications. TV minor change applications are not subject to a 30-day petition to deny period, but are subject to the filing of informal objections. However, unlike Class A stations, analog full-power analog TV interference is governed through channel allotments based on mileage separation requirements which serve to ensure facilities changes will not result in interference problems.[54] Because we do not propose specific separation requirements for Class A stations, we invite comment on whether we should subject the ''more expansive'' Class A minor change applications to a 30-day petition to deny period. The opportunity to file petitions to deny could serve to give some assurance that Class A facilities increases would not result in interference to existing service. This approach would essentially duplicate the process we now use in considering LPTV displacement applications.

47. We contemplate further requiring that the station be able to continue to serve at least part of the community identified on its authorization. Any of the above provisions could also be used for digital Class A stations. Facilities changes for analog or digital Class A stations that would not meet the definition for minor changes would be subject to filing windows and the auction process. We invite comment on how we should define major and minor Class A TV facilities changes and on other ways to streamline the authorization of Class A TV service. If we were to adopt a more inclusive definition of minor facilities changes for Class A stations, should it also apply to television translator and non Class A LPTV stations? We would be inclined to do so because of the technical and application processing similarities

[47] 47 CFR 73.3526 and 73.3527.

[48] 47 CFR 73.1125.

[49] 47 CFR 73.671.

[50] 47 CFR 73.670.

[51] ''Streamlining of Mass Media Applications, Rules and Processes'', Report and Order in MM Docket Nos. 98–43, 13 FCC Rcd 23056, 63 FR 70040 (1998).

[52] 47 CFR 73.3572(a).

[53] We recently altered the definitions of ''major'' and ''minor'' facilities changes for the AM, Noncommercial FM and FM translator services so that fewer changes are regarded as major. See Report and Order in MM Docket 98–93, 64 FR 19498 (1999). Most facilities modifications in the FM and TV services are now considered minor.

[54] This approach is also applicable for DTV allotments not included in the initial allotment table (See 47 CFR 73.623(d).

between the LPTV and proposed Class A services.

48. *Class A Channel Displacement Relief.* Through additional protections for Class A stations, we hope to reduce their risk of channel displacement or termination. However, it could be necessary for a Class A station to seek operations on a different channel, as a way to avoid or eliminate interference conflicts. In that event, we propose that Class A stations be permitted to apply for new channels on a first-come, first-served basis, not subject to mutually exclusive applications. We believe there is a need for displacement relief procedures in a Class A service, and we propose to adopt procedures similar to those used in the LPTV service, which have worked well over the years.[55] Class A stations causing or receiving interference with NTSC TV, DTV or any other service or predicted to cause such interference would be entitled to apply for a channel change and/or other related facilities changes on a first-come first-served basis. We propose that displacement applications filed by Class A licensees be treated as major changes, with the specific exception that such applications would be permitted to be filed at any time that displacement status could be demonstrated. Thus, Class A displacement applications would not have to be filed in a window. Applications of Class A stations would not be mutually exclusive unless filed on the same day. We tentatively conclude that mutually exclusive applications would be subject to the auction procedures pursuant to section 309(j) of the Communications Act. We seek comment on these matters. Commenters may also address whether Class A applications could be excluded from the auction requirements consistent with legislative intent, and the basis on which we would resolve mutual exclusivity when it arises.

49. We note that in the LPTV service, displacement applications related to DTV conflicts or channel relocations from channels 60–69 are given priority over all other types of nondisplacement applications, regardless of when these were filed. We seek comment on whether we should adopt a similar policy for prioritizing Class A facilities modification applications, and whether some or all of the LPTV displacement relief provisions should apply to Class A television. Should there be any different or special provisions for Class A TV conflicts with DTV stations? Should there be a limitation on how far a station should be permitted to relocate its antenna site to avoid or eliminate an interference conflict or would some form of a minimum coverage requirement provide a natural limit on this distance?[56] Should we consider reasons for displacement other than electromagnetic interference, such an unavoidable loss of antenna site? We ask whether Class A displacement applications should have priority over Part 74 LPTV or TV translator non-displacement applications filed earlier or on the same day? If a Class A station and a non-Class A LPTV station file mutually exclusive displacement applications, should we favor the Class A application? We invite comment on these issues.

50. *Channels 60–69.* In the Balanced Budget Act of 1997 (''Budget Act''),[57] Congress required that the Commission ''seek to assure'' that a qualifying LPTV station authorized on a channel from channel 60 to channel 69 be assigned a channel below channel 60 to permit its continued operation.[58] In the DTV proceeding, we amended our rules to permit all LPTV stations on channels 60 to 69 to file displacement relief applications requesting a channel below channel 60, even where there is no predicted or actual interference conflict.[59] On June 1, 1998, we received 116 applications from LPTV stations and 187 applications from TV translator stations operating on these channels. We note that these applications have a higher priority than all other nondisplacement applications for LPTV and TV translators, regardless of when the applications were filed. Other LPTV and TV translator stations on channels 60—69 who have so far not elected to file displacement applications, may do so at any time provided they protect the proposed facilities of earlier-filed displacement applications. The Commission has not selected channels for qualifying LPTV stations; however, it has provided the opportunity for affected stations to seek channels below channel 60 on a priority basis. We invite comment on whether any and if so, what further actions should be taken to meet this Congressional mandate. Should we give special consideration to the processing of displacement applications from qualifying stations in the LPTV service seeking to vacate use of a channel above channel 59? Should these applications be given priority where they are mutually exclusive with other displacement applications that do not qualify under the terms of the Budget Act?

D. Other Technical Issues

51. *Television Channels for Class A Stations.* We propose not to authorize Class A service on channels 52–59. In the DTV proceeding, channels 2–51 were established as the permanent ''core'' spectrum, permitting the recovery of channels 52–59 at the end of the DTV transition period.[60] In the interest of providing long term stability for Class A stations, we believe it would be best not to authorize Class A status on these channels, only to subject stations to future displacement. Accordingly, we propose to grant Class A status only to qualifying stations already authorized to operate on channels 2–51.

52. We recognize that this spectrum limitation could adversely affect stations above channel 51. LPTV and TV translator operators on channels 60–69 have a presumption of displacement and may seek replacement channels at any time without further qualification. However, operators on channels 52–59 may seek displacement relief only where there is an actual or potential interference conflict, including a conflict with a DTV co-channel allotment. Nonetheless, these operators face displacement when channels 52–59 are reclaimed, and would be barred from becoming Class A stations if they could not secure a replacement channel below channel 52. Thus, we ask if the presumption of displacement should be extended to LPTV and TV translator stations authorized on these channels, giving these operators an immediate opportunity to seek replacement channels while such channels might still be available. We recognize this could lead to additional competition for replacement channels, channels which may be needed now by some LPTV and translator stations facing imminent displacement. We invite comment on spectrum issues for Class A stations and, in particular, on whether we should extend a presumption of channels displacement to LPTV and TV

[55] 47 CFR 73.3572(a)(2).

[56] See paragraph 54, *infra.* LPTV stations displaced by interference conflicts with analog TV service are permitted to relocate their sites within 16 kilometers; there is no relocation restriction to resolve DTV conflicts.

[57] See Public Law 105–33, 111 Stat. 251, section 3004 (1997), adding new section 337(e) to the Communications Act.

[58] Section 337(f)(2) of the Communications Act of 1934, as amended, establishes criteria for qualifying LPTV stations. The qualifications are: the station broadcast a minimum of 18 hours per day; the station broadcast an average of at least 3 hours per week of programming that was produced within the market area served by the station; and, the station was in compliance with the requirements applicable to low-power television stations.

[59] Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, *supra,* at paragraph 116.

[60] Sixth Report and Order in MM Docket No. 87–268, *supra,* at paragraph 83.

translator stations authorized for channels 52–59.

53. *Power Levels.* We believe the current power levels are sufficient to preserve existing service, and we believe that further increases could hinder the implementation of digital television and could limit the number of Class A stations that could be authorized. CBA has proposed maximum levels of effective radiated power (ERP) for Class A stations that exceed the ERP limits in the LPTV service rules.[61] However, we note that our primary purpose in this proceeding is to provide additional stability for qualifying LPTV stations, and this by itself is a formidable undertaking. Our current belief is that any further power increases for Class A stations should await a fuller understanding of the coverage and interference potential of full service digital television stations. We invite comment on this aspect of the proposed Class A service.

54. *Coverage Requirements.* Another issue to be resolved is whether to require Class A stations to provide some requisite level of coverage over their community. We question whether a minimum coverage requirement should be imposed on Class A stations. Such stations may not operate with sufficient power to serve large communities, and we have expressed reservations about increasing power limits for Class A stations beyond the current limits in the LPTV service. Those Class A stations that are intended to serve an entire community that is otherwise unserved or underserved would appear to have ample incentive to provide a requisite level of service to the residents of the whole of that community without a Commission requirement to do so. Other stations, by their very nature, might intend to serve only a narrow segment of their community.

55. We seek comment on whether to require any certain signal level or other measure of Class A reception quality to any particular geographical area or population. Alternatively, if we do adopt a coverage requirement, should it be couched in terms of a certain proportion of the Class A station's signal contour having to be placed over at least some part of its community of license?[62] This type of requirement would serve to maintain a connection between the Class A station and its community of license without requiring it to serve any requisite portion of that community. This would be particularly beneficial where the community of license is large and the Class A station is intended to serve only a part of it. We seek comment on this issue and on what portion of a Class A station's signal contour, if any, should have to be placed over some part of its community of license.

E. Ownership Restrictions

56. A principal objective of any proposal to elevate certain LPTV stations to Class A status is to recognize their contribution to local diversity. Accordingly, our preliminary view is that, if we create a Class A service, these rules should apply to Class A licensees to the same extent they apply to full service licensees, at least with regard to local ownership limits. At the present time, we do not believe it appropriate to apply the national audience reach cap to Class A stations. That reach cap is premised on the ability of a full service station to reach the entire market (or, in the case of UHF stations, to actually reach half of the entire market). As noted above, we do not anticipate that Class A stations would be required to reach or, in many instances, would be able to reach an appreciable portion of the markets in which they are located. Thus, it would be inequitable to charge a Class A station with reaching its entire market, and to cap Class A stations under common ownership to reaching a theoretical 35% of the national TV audience, when, in actuality, such a group of stations might reach only a small proportion of that figure. We seek comment on these issues. In this regard, there are several questions we would like addressed by commenters. First, to what degree would application of part 73 multiple and cross-ownership limitations limit the ability of LPTV stations to upgrade to Class A? Second, if we do decide to impose these ownership limitations, should we grandfather existing combinations that would be prohibited by the rule and, if so, should grandfathered status terminate at some point? Third, on the local level, what should be the triggering threshold for any applicable ownership restraints? For example, should the duopoly rule for Class A stations prohibit common ownership of stations whose protected service contours overlap?

F. Digital Class A Stations

57. We propose to allow Class A stations at any time to request authority to convert from analog to digital operation on their existing channels, provided interference protection standards are met. However, we will not, as CBA proposed, permit Class A stations to apply for a second channel for digital operations. We invite comments on this issue.

58. Digital operation by Class A stations presents the issue of compliance with the technical and service rules applicable to full service DTV stations.[63] We invite comment on rules that should or should not apply to digital Class A stations. We currently believe that, at a minimum, these stations should have some broadcast requirement, and we seek comment on this view. What supplementary and ancillary fees regulatory approach should apply to Class A broadcasters providing feeable services? Should it be the same as we apply to full service DTV stations? We also believe primary stations should be required to use the transmission standard adopted for DTV stations and seek comment on this issue. Within what period of time after receiving digital authority, such as CBA's proposal of 18 months, should we require stations to commence digital operation?

G. Remaining Issues

59. Three remaining issues should also be addressed. One issue concerns the format of call signs to be issued to Class A stations? LPTV stations may request use of four-letter call signs, which must be appended by the suffix ''–LP''. Should Class A stations be assigned four-letter call signs without a designating suffix other than ''–TV,'' for example, in the manner of Class A FM radio stations? If not, what is an appropriate suffix? Another issue, which is not mentioned in the CBA petition, is the issue of whether Class A transmitters should be certified (similar to the previous ''type acceptance'' requirement) or should the less stringent part 73 ''verification'' requirement or some other criteria apply? Finally, what class of fees should apply to Class A applicants? We believe it appropriate to classify Class A applications as minor

[61] In the DTV proceeding, section 74.735 of the LPTV rules was amended to replace transmitter power output limits with limits for effective radiated power. The limits for analog LPTV and TV translator stations are 3 kW and 150 kW for VHF and UHF channels, respectively. For digital operations, the limits are 300 watts for VHF and 15 kW for UHF stations.

[62] We recognize that, in effect, LPTV stations are licensed to serve particular areas rather than particular communities. This type of requirement would require that Class A stations be licensed to a particular community even though they would not have to serve a requisite percentage of the entire community or its population.

[63] See Fourth Report and Order in MM Docket 87–268, 11 FCC Rcd 17771, 62 FR 14006 (1996); Fifth Report and Order in MM Docket No. 87–268, 12 FCC Rcd. 12809, 62 FR 26966 (1997), recon. granted in part and denied in remainder Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order in MM Docket No. 87–268, supra; Sixth Report and Order in MM Docket 87–658, supra, recon. granted in part and denied in remainder 13 FCC Rcd 7418, 63 FR 13546 (1998).

modifications for fee purposes. How should Class A stations be considered for the purposes of regulatory fees assessed pursuant to section 9 of the Communications Act of 1934, as amended?[64] We seek comment on these and other issues.

IV. Conclusion

60. In this document, we seek comment on the creation of a Class A low power television service, which would afford stability to LPTV stations providing local service, while also considering the needs of other services, foremost among these the transition to digital television service. Creation of such a service will require the balancing of a number of factors, which will not be easy to strike. Accordingly, we seek comment on all of the issues raised herein to assist us in achieving that balance.

V. Administrative Matters

61. *Comments and Reply Comments.* Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments on before 60 days after publication in the **Federal Register** and reply comments on or before 90 days after publication in the **Federal Register**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121 (1998).

62. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address.'' A sample form and directions will be sent in reply.

63. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W.; TW–A325, Washington, D.C. 20554.

64. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Wanda Hardy, 445 Twelfth Street, S.W.; 3–C221, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the lead docket number in this case (MM Docket No. 99–292), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 445 Twelfth Street, S.W.; CY–B402, Washington, D.C. 20554.

65. *Ex Parte Rules.* This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

66. *Initial Regulatory Flexibility Analysis.* With respect to this document, an Initial Regulatory Flexibility Analysis (''IRFA'') is provided. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an IRFA of the expected impact on small entities of the proposals contained in this document. Written public comments are requested on the IRFA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions in our IRFA regarding the prevalence of small businesses in the television broadcasting industry. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the document, but they must be filed in accordance with the same filing deadlines as comments on the document, but they must have a distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of this document, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981), as amended.

67. *Authority.* This document is issued pursuant to authority contained in sections 4(i), 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, and 307.

Initial Regulatory Flexibility Act Analysis

68. As required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603 (''RFA''), the Commission is incorporating an Initial Regulatory Flexibility Analysis (''IRFA'') of the expected impact on small entities of the policies and proposals as an Appendix to this Notice of Proposed Rule Making. Written public comments concerning the effect of the proposals in this document, including the IRFA, on small businesses are required. Comments must be filed in accordance with the same filing deadlines as comments on the document, but they must have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of this document, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act.[65]

69. *Reason Why Agency Action is Being Considered:* The Community Broadcasters Association filed a Petition for Rule Making asking that the Commission create a ''Class A'' broadcast service consisting of low-power television stations that had provided at least three hours per week of locally produced programming during the three months immediately preceding the filing of their application for Class A status and met other eligibility criteria. Public Notice of that Petition was given on April 21, 1998. Comments and reply comments were filed. On the basis of those comments, the Commission believes that a *Notice of Proposed Rule Making,* considering creation of such a class of television broadcast stations is appropriate. Creation of such a class of television stations would provide qualifying low power television stations primary status

[64] 47 U.S.C. 159.

[65] Public Law 96–354, 94 Stat. 1164. 5 U.S.C. 601 *et seq.* (1981), as amended.

that should help them survive the transition to digital television, which will require, during the transition, a doubling of the number of authorized primary full service stations that will otherwise displace numerous low power stations and eliminate a number of these stations. The document considers creation of the Class A service and asks specific questions on issues on which a further record is necessary and appropriate.

70. *Need For and Objectives of the Proposed Rule Changes:* The document in this proceeding is seeking comment on whether and how the Commission should create a Class A service that will give qualifying low power television broadcast stations primary status. This will allow the continued development of locally produced programming aired on these stations to the benefit of the informational and entertainment needs of the audiences they serve notwithstanding the transition to digital broadcast television service.

71. *Legal Basis:* Authority for the actions proposed in this document may be found in sections 4(i), 303 and 307 of the Commissions Act of 1934, as amended, 47 U.S.C. 154(i), 303, 307 and 307.

72. *Reporting, Recordkeeping, and Other Compliance Requirements:* The Commission is not proposing any new or modified reporting, recordkeeping, information collection, or compliance requirements in this proceeding.

73. *Federal Rules that Overlap, Duplicate, or Conflict with the Proposed Rules:* The initiatives and proposed rules raised in this proceeding do not overlap, duplicate or conflict with any other rules.

74. *Description and Estimate of the Number of Small Entities to Which the Rules Would Apply:* Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA''). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the SBA 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**. There are approximately 2,200 LPTV stations that potentially could be affected by decisions reached it this proceeding. The impact of actions taken in this proceeding on small entities would ultimately depend on the final decisions taken by the Commission and the number of LPTV stations that would qualify and apply for Class A status. However, the impact of the decisions taken in this proceeding on LPTV stations should be a positive one, enabling those qualifying for Class A status to gain a greater degree of security in the continuation of their existence without the potential for continuing displacement during the transition to digital television.

75. *Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives:* This document solicits comment on a variety of alternatives discussed herein. Any significant alternatives presented in the comments will be considered. This proposal will ultimately provide benefits all qualifying low power television stations by facilitating means for them to survive the transition to digital television. We seek comment on the alternatives proposed in this document, on any other alternatives that commenters feel would provide benefits to such stations as they go through the period of transition to digital television, and on whether there is a significant economic impact on any class of small licensees or permittees as a result of any of our proposed approaches.

Initial Paperwork Reduction Act Analysis

76. This document explores the potential creation of a Class A service of television broadcasters. In this Notice of Proposed Rule Making, we solicit comment on the possibility of creating a new application form for LPTV licensees applying for Class A status. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (''OMB'') to take this opportunity to comment on the information collection contained in the Notice of Proposed Rule Making. Public and agency comments are due at the same time as other comments on this document; OMB comments are due 60 days from the date of publication of this document in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth Street, S.W.; 1–C8004., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Virginia Huth, OMB Desk Officer, 725 17th St., N.W. Room 10236 NEOB, Washington, DC 20503 or via the Internet to VHuth@omb.eop.gov.

77. *Additional Information.* For additional information on this proceeding, please contact Keith Larson, Office of the Bureau Chief, Mass Media Bureau, (202) 418–2600 or Roger Holberg, Policy and Rules Division, Mass Media Bureau, (202) 418–2134.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–27530 Filed 10–21–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 990901241–9247–01; I.D. 123198B]

RIN 0648–AM09

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Construction and Operation of Offshore Oil and Gas Platforms in the Beaufort Sea

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received a revised application for a Letter of Authorization (LOA) from BP Exploration (Alaska), 900 East Benson Boulevard, Anchorage, AK 99519 (BPXA) to take small numbers of marine mammals incidental to construction and operation of offshore oil and gas platforms at the Northstar development in the Beaufort Sea in state and Federal waters and a petition from

BPXA for regulations governing such take. By this document, NMFS is proposing regulations to govern that take. In order to implement these regulations, NMFS must determine that these takings will have a negligible impact on the affected species and stocks of marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. NMFS invites comment on the petition/application, and the regulations.

DATES: Comments and information must be postmarked no later than December 21, 1999. Comments on the collection of information requirement must be received no later than December 21, 1999.

ADDRESSES: Comments should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226. A copy of the updated application, Technical Monitoring Plan, Biological Opinion and a list of the references used in this document may be obtained by writing to this address or by telephoning one of the contacts listed here (see **FOR FURTHER INFORMATION CONTACT**). Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement contained in this rule should be sent to the preceding individual and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, D.C. 20503.

A copy of the final environmental impact statement (FEIS) for Northstar may be obtained by contacting the U.S. Army Engineer District, Alaska, Regulatory Branch, P.O. Box 898, Anchorage, AK 99506–0898.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead (301) 713–2055, Brad Smith, (907) 271–5006.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*) (MMPA) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the taking will have a negligible impact on the species or stock(s) of affected marine mammals, will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking.

Summary of Request

On November 30, 1998, NMFS received an application for LOAs granting an incidental, small take exemption under section 101(a)(5)(A) of the MMPA from BPXA to take marine mammals incidental to construction and operation of offshore oil and gas platforms at the Northstar and Liberty developments in the Beaufort Sea in state and Federal waters. On March 1, 1999 (64 FR 9965), NMFS published an advance notice of proposed rulemaking (ANPR) on the application and invited interested persons to submit comments, information, and suggestions concerning the application, and the structure and content of regulations if the application is accepted. Because of delays in construction during 1999, and in issuing this proposed rule, on October 1, 1999, BPXA updated their application to NMFS. This application is available upon request (see **ADDRESSES**). Following is a brief description of the proposed scope of work for the Northstar project. For more detailed descriptions please refer to the BPXA application. Description of the Activity BPXA proposes to produce oil from two offshore oil developments, Northstar and Liberty. These two developments will be the first in the Beaufort Sea that use a subsea pipeline to transport oil to shore and then into the Trans-Alaska Pipeline System. The Northstar Unit is located between 2 and 8 miles (mi)(3.2 and 12.9 kilometers (km)) offshore from Pt. Storkersen, AK. This unit is adjacent to the Prudhoe Bay industrial complex and is approximately 54 mi (87 km) northeast of Nuiqsut, a Native Alaskan community.

Construction is scheduled to begin in December 1999, with both island construction and offshore pipeline installation occurring in 2000. The proposed construction activity includes the construction of several ice roads, one from West Dock and the Pt. McIntyre drill site to the Northstar gravel mine, one from the Kuparuk River delta mine site to Seal Island, and one along the pipeline route to Seal Island. The gravel-haul road will have a parallel alternate road to transport service equipment, construction materials and alternate gravel hauling when maintenance or repair of the main ice road is required. In addition to these main ice roads it is expected that three to four access roads will be cleared of snow to allow light vehicle traffic between the pipeline construction activities and the gravel-haul ice road. These on-ice access roads will have the snow cleared regularly, with intermittent flooding to maintain safe traffic conditions.

It is estimated that during the winter approximately 16,800 large-volume haul trips between the onshore mine site and a reload area in the vicinity of Egg Island, and 28,500 lighter dump truck trips from Egg Island to Seal Island will be necessary to transport construction gravel to Seal Island. An additional 300 truck trips will be necessary to transport concrete-mat slope protection materials to the island.

Construction of a gravel island work surface for drilling and oil production facilities, and the construction and installation of two 10 in (0.25 m) pipelines, one to transport crude oil and one for gas for field injection will take place during the winter and into the open water season of 2000, while the transport and installation of the drill rig and associated equipment will occur during the summer, ending around September 1, 2000. The two pipelines will be buried together in a single trench. During the summer approximately 90 to 100 barge trips from Prudhoe Bay or Endicott are expected to support construction.

The operational phase will begin with drilling as early as the 4th quarter of 2000, and will continue for 2 years. Power will be supplied by diesel generators. This phase of drilling will temporarily cease in mid-August 2001 to allow installation and start-up of process facilities. Drilling is expected to resume by November 2001. Drilling will continue until 23 development wells (15 production, 7 gas injection) are drilled. After drilling is completed, only production-related site activities will occur. In order to support operations at Northstar, the proposed operations activity includes the annual construction of an ice road from Pt. McIntyre to the shore crossing of the pipeline and along the pipeline route to Seal Island. Ice roads will be used to resupply needed equipment, parts, foodstuffs, and products, and for hauling wastes back to existing facilities. During the summer, barge trips will be required between West Dock or Endicott and the island for resupply.

Year-round helicopter access to Northstar is planned for movement of personnel, foodstuffs and emergency movement of supplies and equipment.

Helicopters will fly at an altitude of at least 1,000 ft (305 m), except for takeoffs, landings, and safe-flight operations.

Comments and Responses

On March 1, 1999 (64 FR 9965), NMFS published an ANPR on BPXA's application and invited interested persons to submit comments, information, and suggestions concerning the application and the structure and content of regulations, if the application is accepted. During the 30-day comment period on that notice, comments were received from the Marine Mammal Commission (MMC), Greenpeace Alaska, the Alaska Eskimo Whaling Commission (AEWC), the North Slope Borough (NSB), and the Inupiat Community of the Arctic Slope (ICAS). These comments are addressed here.

In addition to the application for regulations, on August 14, 1998, NMFS received an application from BPXA requesting a 1-year authorization for the harassment of small numbers of several species of marine mammals incidental to construction of the Northstar development in the Alaskan Beaufort Sea. This application was submitted by BPXA to ensure that, if construction began during the winter of 1998/99, it would have an authorization to take marine mammals during the lengthy period of time for developing and promulgating rulemaking. This application and NMFS' preliminary determination that the incidental harassment caused by this activity would have no more than a negligible impact on small numbers of marine mammals and not have an unmitigable impact on subsistence needs for these species were published on October 26, 1998 (63 FR 57096), and a 30-day comment period was provided. An Interim Incidental Harassment Authorization (IHA), limited to ice road construction at Northstar was issued to BPXA on March 15, 1999 (64 FR 13778, March 22, 1999). That document noted that comments received on the IHA application would be addressed in a future **Federal Register** document. Because NMFS was notified by BPXA that they would not be proceeding with construction at Northstar during the spring and summer of 1998, NMFS did not issue an IHA to BPXA for the construction of Northstar during 1999. Therefore, this document contains the comments and NMFS' responses to those comments submitted in response to the IHA application (updated where necessary), in addition to those comments received during the ANPR. Because two separate actions are being discussed in this section, dates have been provided in order to clarify which action is under discussion (11/98 refers to comments on the IHA; 3/99 refers to comments on the ANPR).

Liberty Project Concerns

Comment 1: Several commenters noted that because a Draft Environmental Impact Statement (DEIS) has not been released by the Minerals Management Service (MMS), it would be premature to consider proposing regulations to authorize the taking of marine mammals during the construction and operation of the Liberty oil and gas development project.

Response: NMFS agrees. While this **Federal Register** document contains generic regulations for the taking of marine mammals incidental to offshore oil and gas development in the U.S. Beaufort Sea, the only project under consideration in this rulemaking is the Northstar project. NMFS will not issue proposed regulations regarding incidental takes for the Liberty project until after a DEIS has been released by MMS. This document is scheduled to be released either late this year or early next year.

Northstar Concerns

Comment 2: The AEWC (3/99) believes it is not in a position to comment on incidental take regulations relative to Northstar because: (1) the AEWC is unaware of any final determination regarding the proposed subsea pipeline route for Northstar; (2) the bowhead whale subsistence whaling community objects to the proposed pipeline route in Alternative 5 of the FEIS, and that the AEWC will object to the project as a whole, if Alternative 5 is selected, since that alternative will place the subsea pipeline at greater risk of damage from ice and erosion; and (3) the U.S. Army Corps of Engineers (Corps) reports that for present and reasonably foreseeable oil production in the Beaufort Sea, the ''cumulative probability of one or more major oil spills (greater than 1,000 barrels) is 95.2 percent'' over the next 20 years.

Response: While NMFS has preliminarily determined that either alternative 2 or 5 will result in no more than a negligible impact on marine mammals and not have an unmitigable impact on subsistence needs for marine mammals, the Corps chose Alternative 2, not Alternative 5, as the preferred action. For discussion on oil spill impacts, please refer to a discussion on that subject later in this document.

MMPA concerns

Comment 3: The AEWC (3/99) believes that a 30-day comment period is insufficient for proposed regulations on Beaufort Sea oil and gas development and production. Therefore, the AEWC requests that the public comment period for the proposed regulations be no less than 60 days.

Response: NMFS agrees and has extended the normal 45-day comment period for proposed rules for an additional 15 days for these regulations. However, in order to complete rulemaking in a timely manner, and because most issues have been addressed already in the FEIS issued by the Corps under the National Environmental Policy Act (NEPA), an extension beyond 60 days is unlikely to be available.

Comment 4: Greenpeace (11/98) states that BPXA's reliance on harassment and ''take itself'' to displace seals from construction activities violates the spirit and intent of the MMPA. The MMC (3/99) notes that BPXA's petition for rulemaking suggests that regulations and LOAs authorize the intentional hazing (harassment) of whales and seals to reduce the likelihood of their encountering oil if there is an oil spill. The MMC wants to ensure that BPXA recognizes that intentional hazing cannot be authorized under section 101(a)(5)(A) of the MMPA.

Response: Section 101(a)(5)(A) requires NMFS to implement ''regulations setting forth * * * permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat * * *.'' Therefore, if there is an authorization for the incidental harassment of marine mammals, and that incidental harassment takes place, the fact that the marine mammmals do not return to the area is not considered by NMFS to be a violation of the MMPA. In fact, because certain activities (e.g., ice road construction, oil spills) have some potential for serious injury or mortality for marine mammals that remain within the area, NMFS believes that early displacement of these animals would be to the animals' benefit. When mitigation measures that lower the potential for marine mammals to be seriously injured or killed have been identified, those measures, including, when necessary, intentional harassment measures can be authorized under the appropriate provision of the MMPA.

Comment 5: Greenpeace (11/98) contends that NMFS artificially segregated the IHA process. Greenpeace states that the MMPA does not provide for NMFS to issue ''first-year construction'' and later ''construction and operation.''

Response: NMFS disagrees. While the MMPA does not provide for this segregation, it also does not prohibit issuing an IHA in 1 year and then promulgating regulations for a 5-year authorization. Congress implemented the IHA process as an expedited procedure recognizing the time necessary in the Federal Government for the promulgation of regulations. Congress recognized that NMFS must be afforded some procedural flexibility in order to streamline the review of small take authorizations when the taking is limited to incidental harassment(see MMPA Amendments of 1994. H.R. Rep. No. 103–439, at 29–30, 1994). Even under an ideal schedule, regulations could not be implemented within the time period between the release of the DEIS and receipt of a small take application and the proposed time for ice-road construction in early winter, 1998/99. This prompted BPXA's IHA application.

Comment 6: Greenpeace (11/98) contends that, because NMFS' IHA review process took 73 days, instead of the statutory 45 days, NMFS improperly noticed the proposed action in the **Federal Register**.

Response: While there is a statutory requirement for NMFS to publish notice of receipt of an application not later than 45 days after receipt of an application, that process may be delayed due to either the adequacy of the application or meeting certain requirements under the NEPA. In this case, because the supporting NEPA documentation (i.e., the FEIS for this activity would not be released within the statutory 120 days of receipt of an IHA application, and because NMFS determined that it could not issue an IHA to BPXA without this document, NMFS determined that, because of the complexity of the activity, a more detailed review could be undertaken than statutorily allowed by the MMPA.

Comment 7: Greenpeace (3/99) believes that NMFS did not fairly consider Greenpeace's comments on BPXA's application for an interim IHA for Northstar construction.

Response: NMFS gave full consideration to Greenpeace's comments contained in their November 24, 1998, letter when it issued an interim IHA to BPXA on March 15, 1999 (64 FR 13778, March 22, 1999). As mentioned previously, NMFS' review of comments submitted on the 1998 IHA application are addressed in responses in various parts of this document.

Scientific evidence concerns

Comment 8: Greenpeace (3/99) believes that there is an overwhelming lack of scientific evidence supporting the claim that BPXA's construction and operation of the Northstar and Liberty projects pose a negligible impact to marine mammals and do not pose an unmitigable impact on the availability of marine mammals for subsistence uses. Greenpeace believes that the Northstar DEIS and FEIS are inadequate for supporting these claims.

Response: NMFS has reviewed both the DEIS and FEIS prepared by the Corps on the Northstar project and has determined that that document contains the best scientific information (and Traditional Knowledge) available for assessing impacts on marine mammals by the construction and operation of the Northstar project. As noted later in this document, NMFS has preliminarily determined that the best scientific information available indicates that construction and operation of Northstar will have no more than a negligible impact on marine mammals and not have an unmitigable adverse impact on subsistence uses of marine mammals. NMFS will continue to evaluate new information during this rulemaking period and invites reviewers to submit data or references on the potential impacts on marine mammals from oil development on the North Slope.

Small Take Concerns-Ringed Seals

Comment 9: For reasons stated in their letter, including the lack of current reliable figures for ringed seal populations, Greenpeace (11/98) contends that it is impossible for NMFS to meet the negligible impact requirement of the MMPA without current information on the status of the Beaufort Sea ringed seal population.

Response: NMFS uses the best scientific information available when making determinations that marine mammal takings are small, that activities are having no more than a negligible impact on the species or stock(s) of marine mammals and not having an unmitigable adverse impact on the availability of the species or stock(s) of marine mammals for subsistence uses. Hill and DeMaster (1998) indicates that there are no current population estimates available for ringed seals. However, such estimates are not critical when takings are expected to be limited to incidental harassment. Provided the activity itself is not having more than a negligible impact on the population, population fluctuations due, for example, to increasing polar bear populations, global warming and persistent organic pollutants are not critical, but are considered when making determinations on potential biological removal (PBR) levels. However, while there are no current population estimates available, crude population estimates have been made: Kelly (1988) estimated that 1–1.5 million seals occur in Alaskan waters, Frost and Lowry (1984) extrapolated a winter population of 40,000 ringed seals from a mean density estimate of 0.4 seals/km^2 and estimated that the summer population would be 80,000. Amstrup (1995) estimated a population size of 326,500 (208,000 in the pack ice and 118,500 in the shorefast ice).

Because NMFS expects that ringed seals may be harassed, but not killed as a result of industry activities, knowledge of the species' local density is more important than a reliable estimate of population abundance. There are numerous studies that have documented the density of ringed seals in the Northstar area. ADF&G surveys have shown densities of 0.33 to 0.66 seals/km^2 (0.85 to 1.71 seals/mi^2) (Frost *et al.*, 1997; Corps, 1999) and a 1997 survey in the Northstar area showed an average density of 0.42 ringed seals/km^2 on landfast ice over water depths of 5–20 m (16.4–65.6 ft) (Miller *et al.*, 1998). Virtually no seals were seen where water depths were less than 3 m (9.8 ft)(Miller *et al.*, 1998). The Northstar ringed seal surveys included as part of the monitoring plan will provide up-to-date, site-specific density estimates at Northstar, and can be compared with past density estimates. Because these surveys began in 1997, they will provide a baseline against which results of future seal surveys during and after Northstar construction can be compared.

Although aerial surveys during spring are the standard method for documenting densities and distribution of ringed seals, the densities tend to be underestimated because not all ringed seals are hauled out on the ice at any one time, and aerial surveys may not see all seals hauled out on the ice. These underestimates are taken into account when estimating impacts and levels of take.

Comment 10: Greenpeace (11/98) is concerned about the effects of an increasing polar bear population and anthropogenic and non-anthropogenic impacts on ringed seals.

Response: Because the taking of ringed seals incidental to Northstar activities will be almost exclusively by incidental harassment and no serious injury or mortality is expected as a result of Northstar construction and operation, fluctuating population levels should be of little consequence. Provided the total taking by the activity itself is having no more than a negligible

impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, the authorization can be granted. It should be noted moreover, that the U.S. Fish and Wildlife Service (USFWS) believes the polar bear population on the North Slope has reached its carrying capacity and that its growth rate will slow or stabilize.

NMFS believes that the research and monitoring underway since 1997, at Northstar and the central Beaufort Sea, including aerial monitoring surveys conducted by both ADF&G and LGL Limited support the scientific evidence that the takings incidental to Northstar construction and operation will be negligible.

Comment 11: Greenpeace (11/98) questions BPXA's statement that ringed seals give birth in their lairs ''starting in late March and nurse their pups for 4–6 weeks.'' This, Greenpeace believes, underestimates the birthing and nursing periods for ringed seals. Ringed seals continue birthing through April and early May, with nursing in subnivean lairs continuing through May and early June. As such, harassment and take of ringed seals will be significantly greater than that which is set forth by BPXA in its application.

Response: NMFS agrees that the BPXA statement could have included more complete information on the life history of ringed seals. NMFS does not agree that the impact will be significantly greater than what is provided in the application because BPXA has timed its operations to avoid, to the greatest extent practicable, harassment during the period when ringed seals are pupping. By constructing the ice roads between December and February, well prior to the ringed seal pupping season, and maintaining and operating those roads during the season, it is unlikely that ringed seals would remain in the vicinity of the ice road corridor and expose themselves and later, their young, to the noise if the female was within an area that was annoying to it.

Comment 12: Greenpeace (11/98) questions BPXA's use of March 20 as the beginning date to require ringed seal surveys in previously undisturbed areas. Greenpeace believes that this fails to protect seals occupying lairs prior to March 20.

Response: Due to the instability of the shorefast ice during mid- to late-March, it is highly unlikely that roads relating to Northstar construction or operation would be constructed after March 20. NMFS reviewed the citation provided by BPXA and noted that the late-March date was for the area of the eastern Beaufort Sea about 60° N, not in the Beaufort Sea at about 70° 30'N. Smith (1988) noted the difference in reproductive timing between his data for a mid-April birthing in the Western Arctic at approximately 72° N and McLaren's mid-March date. Smith (1988) suggests a latitudinal gradient in the time of pupping. If so, NMFS notes that the March 20 date should be conservative. This date was the standard date for operational constraints on the on-ice seismic industry prior to establishment of the small take authorizations in 1982 (see 47 FR 21248, May 18, 1982). If better scientific information is provided that indicates a different start date should be used or that different methods should be implemented, NMFS is willing to consider that information.

Comment 13: Greenpeace (11/98) contends that BPXA's 50 m (164 ft) distance for avoiding any detected ringed seal lairs is insufficient and unsupported if the intent is to avoid any take. If so, then the distance would have to be greater than 3 km (1.86 mi).

Response: While NMFS agrees that at present there is no scientific evidence supporting a distance of 50 m (164 ft) from lairs for avoiding takes of ringed seal pups, there is also little support for a distance as great as 3 km (1.86 mi). As ringed seals departed lairs in response to vibroseis and its associated equipment at a distance up to 644 m (2,113 ft)(Kelly *et al.* 1986), and as Burns and Kelly (1982) suggest that heavy equipment and human activity are the major source of disturbance, not the vibroseis noise itself, NMFS presumes that ice road construction is likely to disturb ringed seals about the same degree as vibroseis. Therefore, ice roads constructed in water (ice and water combined) deeper than 8 ft (2.4 m) should avoid active seal lairs by at least 650 m (2,132 ft) unless a small take authorization has been issued, especially after March 20. However, because ice roads for gravel hauling and pipeline trenching at Northstar cannot deviate greatly from a straight line, NMFS retained the requirement under the Interim IHA issued to BPXA on March 15, 1999, that ice road construction begun after March 20, 1999 avoid ringed seal lairs by 50 m (164 ft), and did not increase that distance as recommended. However, while NMFS believes that it is very unlikely that any new ice roads would be constructed that late in the season in the Beaufort Sea due to the condition of the ice in most years, it is inviting further discussion on this issue during this rulemaking. At this time, NMFS proposes to require all ice roads, except the gravel road and the pipeline road, avoid seal lairs by a minimum of 150 m (492 ft), which is an increase over the 50–m (164 ft) retained in the Interim IHA and is similar to NMFS' requirements for vibroseis surveys.

Marine Mammal Concerns–Bearded Seals

Comment 14: Greenpeace (11/98) believes that (1) given the lack of population data for bearded seals, it is not possible for BPXA to estimate the number of bearded seals that would be taken and (2) given the lack of baseline data on the population of bearded seals, it is impossible for NMFS to determine that the take of these marine mammals would pose a negligible impact.

Response: Using data collected in 1996 and 1997 near Seal Island (Harris *et al.*, 1997, 1998), BPXA calculated estimates of harassment takes that might occur as a result of construction and related activities at Northstar. The calculation method was provided in the BPXA IHA application. Based on this calculation method, BPXA estimates that between 9 and 26 bearded seals might be harassed incidental to Northstar open-water activities. When takes are limited to the incidental harassment of small numbers of marine mammals, a negligible impact determination can be made without recent baseline data (see response to Comment 9).

Marine Mammal Concerns–Spotted Seals

Comment 15: Greenpeace (11/98) states that BPXA's application fails to include any information on the current use of the area by spotted seals, or the potential effects of summer construction activities on the species.

Response: This information was provided in various sections of BPXA's IHA application (and later in the Northstar/Liberty LOA application). For example, information on the status and distribution of spotted seals was provided on page 23 to 25 of the IHA application and information on potential impacts was provided on pages 51 through 55 of that document. However, because most spotted seals are found in the Bering and Chukchi seas, fewer than 5 spotted seals are expected to be exposed to harassment takes during the open water season and none during the hard water (ice) season.

Marine Mammal Concerns-Bowheads

Comment 16: The MMC (3/99) notes that the petition indicates that as many as 1,380 bowhead whales could possibly be taken annually by harassment

incidental to Northstar construction and operation. Although the effects of incidental harassment on the bowhead population may well be negligible, it is not clear why the possible cumulative effects are expected to be negligible or why taking up to 1,380 bowheads annually (6,900 over 5 years) is considered to be a ''small'' number.

Response: NMFS cautions that BPXA's estimate that 1,380 bowhead whales might be harassed incidental to Northstar construction, and later operations, is a maximum take level, not the best estimated take level. The expected average level of take by harassment for bowheads is 173 animals annually (based on the best scientific information that approximately 1.88 percent of the bowhead population will migrate within 10 km (6.2 mi) of the barrier islands) (BPXA, 1998). Only in those years (such as the single year (1997) between 1979 and 1997) when the bowhead migration corridor is close to shore, would BPXA and NMFS expect up to 52 percent of the bowhead population to incur a take by incidental harassment. Takings by Northstar during this event may result in up to 1,380 bowheads being harassed. As takings by harassment at this level would not be expected every year (and might not occur during a 5-year authorization), NMFS believes that the takings (by harassment) should be considered small. Also because most bowheads that would be encountered would be migrating, it is unlikely that a given bowhead would be incidentally harassed on more than one date.

Comment 17: Greenpeace (11/98) contends that construction activities at Northstar pose a significant threat to the migration of bowhead whales. Any delays in scheduling could result in an even greater number of industrial activities occurring during the fall bowhead migration.

Response: NMFS recognizes that delays in construction scheduling could result in increased harassment takes of bowhead whales. This has been partially recognized by BPXA in their July 26, 1999 letter to NMFS wherein they note that movement of the drilling rig is currently scheduled for September 1, 2000. BPXA has also assured NMFS and the AEWC/NSB that all construction and operational activities at Northstar during the bowhead migration period would be conducted safely and would not interfere with the fall bowhead hunt. As a result, NMFS will need to base its determinations of negligible impact on marine mammals and no unmitigable adverse impact on subsistence uses on statements made by BPXA and analysis of data in the FEIS and BPXA application. If NMFS cannot make a finding of negligible impact (and no unmitigable adverse impact on subsistence uses) determination, then the LOA (if issued) would either not authorize incidental takes during the bowhead migration, or, in coordination with the AEWC/NSB, identify mitigation measures that would allow NMFS to make a negligible impact determination.

Comment 18: Greenpeace (11/98) notes that the DEIS for Northstar describes impacts from pile driving required for installation of island slope protection as ''one of the greatest noise impacts to bowhead whales'' and that data was not presented by BPXA on how far away from the island this sound source could be heard, and even though bowheads aren't yet ''in the vicinity'' they still receive sounds transmitted over long distances. Greenpeace contends that this impact should be analyzed in detail because even a short delay in the schedule could result in this massive sound source taking place during bowhead migration.

Response: BPXA's application describes in detail expected sound pressure levels (SPLs) from pile driving in the Beaufort Sea. According to the application (BPXA, 1998), impact hammering measured at Sandpiper, nearby to Northstar, received sound levels just above the seabottom 1 km (0.6 mi) from Sandpiper Island ranged from 110 to 135 dB re 1 μPa_{RMS}. These transient signals from impact hammering were similar in characteristics to seismic pulses, but considerably weaker; the received levels at 1 km (0.6 mi) range were similar to those from a seismic vessel more than 10 km (6.2 mi) away. Vibratory hammering produced even lower noise levels. To mitigate noise levels from impact hammering, BPXA has adopted NMFS suggestion (found in the March 4, 1999, Biological Opinion), to install sheet piling using agitation methods instead of impact hammering. This work is anticipated to be completed prior to bowhead migration. Therefore, even if island construction continues after bowhead whales appear, these noises would not be expected to significantly affect those bowhead whales in the main bowhead migration corridor.

Comment 19: Greenpeace (11/98) states that industrial noise and other activities interfere with cow-calf bonding, and causes displacement from migratory routes. The energetic costs of noise-related changes in behavior and distribution patterns are potentially significant and will inevitably constitute harassment and take.

Response: Loud industrial noises, such as seismic surveys, in the marine environment have been identified as potentially interfering with cow-calf bonding. However, the best information indicates that this interference would need to occur around the time of birth or shortly thereafter (Gentry, R. pers. comm., 1999). Since bowhead whales are born in the spring in the Bering Sea, and as the spring-time eastern migration through the Beaufort Sea is well offshore of the Northstar site, noise from Northstar is unlikely to interfere with bonding. Changes in marine mammal migration patterns and behavior due to anthropogenic noise constitute Level B harassment. For that reason, BPXA has applied for a small take authorization under section 101(a)(5)(A) of the MMPA.

Comment 20: Greenpeace (11/98) contends that given the lack of studies and information on the effects of construction and heavy equipment activity on artificial islands on cetaceans, NMFS should take the precautionary approach and deny BPXA's request for an IHA until such time as the applicant can present conclusive data that its activities will not harm, harass, or take cetaceans.

Response: BPXA applied for an IHA on the assumption that it will take, by harassment, several species of marine mammals incidental to the construction at Northstar. However, because work on Northstar did not proceed into the open water season of 1999, an IHA to incidentally harass bowhead whales during construction of Northstar was not issued to BPXA in 1999. NMFS believes that both the IHA application and the LOA application provide detailed information on the anticipated impacts on marine mammals from construction at Northstar.

Negligible Impact Concerns

Comment 21: Greenpeace (3/99) believes that BPXA fails to consider the impact of the full array of Northstar and Liberty construction and operation activities on marine mammals. The proposed LOAs and regulations seek to include the impacts of oil spills on marine mammals, and are being proposed at a time when the environmental review of Northstar is incomplete, a final determination on the project has not yet been made, and the public environmental review of Liberty has not progressed beyond the scoping stage. Greenpeace (3/99) believes that incidental takes would not be negligible given BPXA's request that the 5-year regulations include lethal takes of marine mammals caused by oil spills.

Response: Please see our response to comment 1 regarding the Liberty project. Since the time that Greenpeace submitted its letter (3/99), the Corps has completed its environmental review of the Northstar project.

NMFS believes that a small oil leak or spill at either the oil rig or the pipeline would affect only a small number of marine mammals and have no more than a negligible impact on marine mammals and subsistence uses of those marine mammals. However, a large oil spill, although unlikely to occur during the 5-year authorization time period under consideration here, could result in a number of marine mammals being taken, and, if the spill intersects with the bowhead migration corridor during the time of the bowhead migration could have more than a negligible impact on marine mammals and the subsistence uses of that species. Because the probability of a large oil spill occurring during the 5-year period of the authorization that will affect marine mammals is low, NMFS believes that a finding of negligible impact may be appropriate even though the potential effects could be significant. As in this case, NMFS will need to balance the probability of occurrence with the potential severity of harm to the species and stocks of potentially affected marine mammal(s) to determine negligible impact. When applying this balancing test, NMFS needs to evaluate as thoroughly as possible the risks involved and the potential impacts on marine mammal populations. This determination will be made based on the best available scientific information and, if determined to be negligible and an LOA is issued, will be supported or negated later through the required monitoring program. For information on cumulative impacts please refer to response to Comment 29 later in this document.

Coordination Concerns

Comment 22: The MMC (3/99) noted that neither the BPXA petition for regulations nor the **Federal Register** ANPR recognize the possibility that road construction, etc. could attract polar bears and cause ringed seals in the affected areas to be more vulnerable to predation by the bears. The MMC therefore recommends that NMFS consult with the USFWS to determine and, if appropriate, cooperatively specify monitoring requirements for polar bears and ringed seals.

Response: NMFS concurs that coordination with the USFWS on monitoring is warranted. That coordination begins with the release of this document. In addition, the USFWS has been invited to attend peer review workshops wherein NMFS and others review previous monitoring and upcoming monitoring plans.

Subsistence Concerns

Comment 23: The NSB (3/99) requested that if the petition (for regulations) is approved, it should be with strong additional consideration given to tailoring industry operation schedules to respect the whaling season of Nuiqsut, and its subsistence use of Cross Island.

Response: BPXA anticipates that they will coordinate the construction and operation of Northstar with both the AEWC and the NSB, and will successfully conclude a Conflict and Avoidance Agreement (C&AA) with the affected villages. NMFS invites additional comment on its regulations concerning its requirements for making a finding of no unmitigable adverse impact on subsistence uses in § 216.205.

Comment 24: For several stated reasons, Greenpeace (11/98) believes that NMFS' deferral of addressing any unmitigable adverse impacts to the C&AA, a private BPXA-NSB negotiation, results in significant procedural flaws in the IHA process. Greenpeace concludes that the C&AA is an essential element in avoidance of unmitigable adverse impacts on subsistence. The C&AA should be made available for public review prior to issuance of the IHA.

Response: NMFS does not agree. The C&AA is an agreement between two (or more) non-Federal organizations that is not subject to either public or Federal review and is not recognized by the MMPA. As a courtesy, these parties provide a signed copy of the C&AA to NMFS. In order for NMFS to determine that there will not be an unmitigable adverse impact on the availability of marine mammals for taking for subsistence purposes, the application instructions require that the information items specified in § 216.104(a)(11) and (a)(12) must be provided. If commenters, including the NSB, believe the activity will have an adverse impact on subsistence uses that at present is unmitigated, they have the opportunity to comment on these statements in the application. If during the comment period evidence is provided indicating that an unmitigated adverse impact to subsistence needs will result from the activity, a small take authorization may be delayed to resolve this disagreement. If significant comments are not received on this issue, NMFS will review the information and determine whether or not there are any unmitigable adverse impacts prior to issuance of the small take authorization. If, on the other hand, an adverse impact is identified, which may be mitigated, then NMFS can, as here, make it a requirement of the small take authorization that parties continue to meet to resolve these differences. If a C&AA is not signed, NMFS has the option to review each party's concerns, and may, if warranted and under proper procedures, amend or suspend an authorization. NMFS recognizes, however, that receipt of a signed C&AA prior to issuing a small take authorization supports NMFS preliminary determination that the activity will not have an unmitigable adverse impact on subsistence needs.

Comment 25: Greenpeace (11/98) states that BPXA's IHA application fails to consider the impact of its activities on the communities of Point Hope, Point Lay, and Wainwright. These communities rely on migrating subsistence species such as the bowhead whales that pass through the impact zone of Northstar construction activities.

Response: The three mentioned communities hunt bowhead whales in the Chuckchi Sea during the spring migration, not during the fall migration when bowheads might be incidentally harassed by activities at Northstar. Because no bowheads are expected to be seriously injured or killed as a result of construction and operation of the Northstar Unit (thereby depriving those communities of a potential harvest), and because the spring migratory path of bowheads will not be affected by Northstar construction or operation, NMFS has been unable to identify an adverse impact to the subsistence needs of these communities. If these communities believe that the Northstar project will have an unmitigable adverse impact on their subsistence needs, they will have an opportunity by review of this document to express those concerns.

Comment 26: Greenpeace (11/98) supports its opinion (on subsistence impacts) by quoting from the DEIS that BPXA's Northstar proposal would result in ''bowhead whale avoidance response to noise generated at Seal Island and project-related vessel and helicopter noise and activity,'' which the DEIS concludes would be ''significant to subsistence harvesting'' (DEIS page ES–97).

Response: The DEIS and FEIS identify two sources of noise during Northstar construction that have the potential to result in a more than negligible bowhead deflection during the Nuiqsut bowhead subsistence hunt. These are impact hammering and vessel activity. The DEIS identified ocean going tugs as having a potential deflection of

migration patterns at distances ranging from 9.3 mi (15 km) to 25 mi (40 km). If large ships are active at Northstar during the fall bowhead migration, deflection behavior could occur at the western border of Nuiqsut's bowhead harvest area. If bowheads deflected at a distance of 25 mi (40 km), and no bowheads were struck within the eastern range of the Cross Island whaling area, impacts to the fall whale harvest could be significant. The DEIS and FEIS also note however, that bowheads near the western border of Nuiqsut's bowhead harvest area are not expected to be affected by small vessels operating at Seal Island (i.e., Northstar).

Pile driving for the installation of island slope protection would be one of the greatest noise impacts to bowhead whales, if it were to occur during the migration period (Corps, 1998. However, impact pile driving for sheet piling for the island perimeter and docks and for well conductors are scheduled to be completed by the end of July, prior to the initiation of the bowhead whaling season. In addition, impact pile driving has been replaced, where possible, by agitation methods. Therefore, at this time, significant impacts from construction at Northstar during the bowhead migration season are not anticipated.

Comment 27: Greenpeace (11/98) notes that the DEIS (page 10–27) concludes that ''island construction would have a significant effect (i.e., ''cumulative effects of noise on bowhead whale migration routes and resulting effects on subsistence whaling activities are considered significant cumulative impacts'').

Response: It should be noted that this statement has been modified in the FEIS to note that ''significant long-term displacement of bowhead whales is not expected to occur as a result of Northstar operations.''

Cumulative Effects Concerns

Comment 28: Greenpeace (11/98) states that NMFS must consider the impact of climate change on the Arctic marine ecosystem in a cumulative assessment of the impacts of seismic activities on ''protected resources'' in the agency's trust.

Response: NMFS disagrees, noting that long-term cumulative impacts are an issue for discussion under NEPA, not the MMPA. Section 101(a)(5)(A) of the MMPA requires NMFS to make an assessment of the total taking by a specified activity (i.e., oil and gas development) in a specified geographic region during an authorization period. If, among other things, the total taking will not have more than a negligible impact on the affected marine mammal stocks, the authorization would appear to be appropriate. (There is not a similar requirement for assessing total takings for authorizations under section 101(a)(5)(D) of the MMPA). It should be noted however, that seismic activities are the subject of a separate small take authorization process and not a part of BPXA's application.

Comment 29: Greenpeace (3/99) contends that BPXA fails to consider the cumulative impacts of Northstar and Liberty construction and operation that will affect marine mammals, subsistence, and the Arctic marine environment. These impacts include chronic pipeline leaks, oil spills, noise, pollution and other forms of industrial disturbance.

Response: Unlike Comment 28, NMFS views this comment on cumulative impact as meaning the ''total taking'' of marine mammals by the Northstar and Liberty projects. To evaluate expected impacts and to determine whether these takings can be considered negligible and not have an unmitigable adverse impact on subsistence uses, one must first understand the statutory mandates of section 101(a)(5) of the MMPA, and Congressional intent as provided in House Reports. Section 101(a)(5)(A) of the MMPA requires the Secretary to ''find that the total of such taking during each five-year (or less) period concerned will have a negligible impact on such species or stock and will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses * * *.'' Current NMFS regulations require that '' * * * the total taking by the specified activity during the specified time period will have a negligible impact on the species of stock of marine mammal(s) * * *''

(§ 216.102). NMFS believes that this statement accurately reflects the statutory meaning of the phrase ''such taking during each five-year (or less) period.'' The specified activity is defined in NMFS regulations as ''any activity, other than commercial fishing, that takes place in a specified geographical region and potentially involves the taking of small numbers of marine mammals.'' It was the intent of Congress that ''the specified activity * * * referred to in section 101(a)(5) [should] be narrowly identified so that the anticipated effects will be substantially similar. Thus, for example, it would not be appropriate for the Secretary to specify an activity as broad and diverse as outer continental shelf oil and gas development. Rather, the particular elements of that activity should be separately specified as, for example, seismic exploration or core drilling'' (H.R. Rep. No. 97–228 at p. 19, 1981).

When an applicant requests NMFS promulgate a 5-year set of regulations, applicants are required to submit the information requested in § 216.104(a) on their activity as a whole, which includes, but is not necessarily limited to, an assessment of total impacts by all persons conducting the activity (§ 216.105). NMFS believes that BPXA provided the required information since they discussed combined impacts and included incidental take estimates for both Northstar and Liberty projects, but did not include discussion of seismic work, moving exploratory drilling equipment, etc.

Mitigation Concerns

Comment 30: The MMC (3/99) notes that if work is required after March 20 in a previously undisturbed area, a survey will be conducted to determine the presence of ringed seal lairs prior to commencement of activities. However, it does not indicate how the presence of an active, ringed seal lair would influence construction activities, or what mitigation measures would be undertaken. Would the road be rerouted to avoid active ringed seal lairs by some specified distance or will it be routed in the straightest line possible and assume that any pup in a lair within a certain distance will be abandoned and die?

Response: Due to the instability of shorefast ice during that time of the year, it is highly unlikely that any roads relating to Northstar construction or operation would be constructed after March 20. If ice roads are constructed, they would be secondary roads and not the main gravel hauling road and pipeline road, which are not flexible and cannot be rerouted to avoid seal lairs. However, for secondary roads in previously undisturbed areas, NMFS proposes to require these roads to avoid seal lairs by a minimum of 150 m (492 ft), similar to NMFS' requirements on vibroseis surveys.

Comment 31: Greenpeace (11/98) believes that BPXA will not take even the most basic of mitigation measures in ceasing operations during the bowhead migration.

Response: Scheduling has been designed to complete as much of the construction activity prior to the bowhead migration and bowhead subsistence hunting period as possible. Mitigation measures are described in the section entitled ''Proposed Mitigation Measures.'' NMFS will be reviewing BPXA's current schedule for potential impacts on bowhead whales and other

marine mammals during this rulemaking.

Comment 32: Greenpeace (11/98) states that it is impossible to place adequate mitigation measures (i.e., safety zones) into place when there is inadequate knowledge about the impacts of seismic operations on cetaceans' hearing and behavior. Greenpeace believes the precautionary principle requires further research before ''potentially permanent'' damage is incurred.

Response: Seismic operations have not been requested for inclusion under either the IHA or the 5-year authorization. The application contains a description of actions BPXA will take to mitigate noise from construction on bowhead whales. While NMFS believes that sufficient information is available (see discussions elsewhere in this document) on the expected impacts of construction and operations at Northstar on marine mammals to make a preliminary determination that the taking will be negligible and not have an unmitigable impact on marine mammals, NMFS agrees that additional information is warranted. This information will be obtained during construction and operation through a monitoring program funded by BPXA.

Monitoring and Reporting Concerns

Comment 33: The MMC (3/99) recommends that NMFS initiate the rulemaking as requested, provided it is satisfied that the planned marine mammals and related monitoring programs will be adequate to verify how and over what distances marine mammals may be affected, that only small numbers of marine mammals are taken, and that the cumulative impacts on the affected species and stocks are negligible.

Response: On July 1, 1999, NMFS scientists and others met in Seattle to discuss the open water monitoring program for construction and operation at Northstar. Based on the recommendations from that peer review workshop, BPXA has made appropriate amendments to the monitoring plan found in its application and in the updated monitoring plan submitted to NMFS on May 6, 1999. A copy of its August, 1999 monitoring plan is available upon request (see **ADDRESSES**)).

While BPXA summarized monitoring plans for on-ice monitoring during that meeting, discussion and evaluation of that portion of BPXA's monitoring plan was set aside for discussion late this year with appropriate seal biologists. The recommendations of the MMC will be provided to reviewers of BPXA's on-ice monitoring plans.

Comment 34: The MMC (3/99) recommends that NMFS specify in the regulations that proposed monitoring plans and the results of the monitoring programs be reviewed annually by NMFS and outside experts to confirm that the monitoring programs are capable of detecting any non-negligible, cumulative population-level effects and that the requirements will be revised as necessary if there is uncertainty in that regard.

Response: NMFS believes that conditions regarding monitoring and peer-review of monitoring plans, and the results, should be requirements under LOAs, not regulations. Under LOAs, requirements, including independent peer review, can be modified more efficiently and timely than is possible under regulations.

Comment 35: The MMC (3/99) noted that BPXA proposes to use a comparison of ''before'' and ''after'' aerial survey data to assess the impact of the offshore developments on ringed seal numbers and distribution. The MMC suggested how those comparisons should be undertaken.

Response: This work, now in its second year of data collection, is discussed in detail in the Technical Plan for Marine Mammal and Acoustic Monitoring during Construction of BPXA's Northstar Oil Development for 1999. A copy of this report is available upon request (see **ADDRESSES**). The MMC recommendation has been forwarded to marine mammal scientists for consideration.

Comment 36: The MMC (3/99) questions whether a visual survey alone will detect even the majority of seal lairs in the vicinity of the proposed activities and therefore ensure that those activities will have the least practical adverse impact possible. If NMFS concurs that the use of dogs puts ringed seals at risk, then alternative methods should be considered to help ensure that the activities have the least practical adverse impacts possible.

Response: NMFS believes that by requiring BPXA to construct ice roads for gravel hauling and pipeline construction as early in the season as practicable, at a time prior to establishment of lairs, impacts have been mitigated to the greatest extent practicable. In addition, NMFS believes that the noise from construction will deter ringed seals from establishing new breathing holes or lairs in the vicinity of ice roads. While dogs under experienced handlers are unlikely to put ringed seals at risk, NMFS recognizes that some disturbance at seal breathing holes and lairs by approaching dogs and humans is likely. As a result, NMFS questions the value of using dogs as a monitoring tool (as opposed to using dogs as a research tool) to determine impacts caused by ice road construction, operation, and maintenance. Alternatively, long term monitoring of ringed seal trends in density have been undertaken by funding under MMS by ADF&G and by BPXA. NMFS believes that this latter monitoring is preferable for the Northstar project, but invites additional comments on the subject.

Comment 37: The MMC (3/99) notes that the petition does not indicate what would be considered a significant difference in the number of abandoned and active holes between the reference (i.e., control) area and the construction area or what would be done if a significant difference is detected. In addition, while the counting bias is likely to be constant, the reduced numbers produced by failing to count inactive sites could affect the ability to show a significant difference in the ratios. The MMC suggests that this potential problem could be alleviated by ground truthing the aerial surveys to calculate a correction factor for abandoned and active holes counted from the air.

Response: NMFS has determined that the on-ice portion of the BPXA monitoring program will need to be the subject of a peer review workshop. This workshop is tentatively scheduled for mid-October. The issues raised by the MMC in this comment and in previous comments will be reviewed at this workshop.

Comment 38: Greenpeace (11/98) concludes that BPXA's IHA application must be denied by NMFS on the basis that it lacks a peer-reviewed monitoring plan based on sound science.

Response: In accordance with section 101(a)(5)(D)(ii) of the MMPA, the authorization (i.e., the IHA), where applicable, is to contain requirements for monitoring and reporting of takings by harassment, including the requirements for the independent peer-review of proposed monitoring plans or other research proposals where the proposed activity may affect the availability of a species or stock for taking for subsistence uses. Because takings authorized during the winter are unlikely to affect the availability of a species or stock of marine mammal for subsistence purposes, the IHA did not need to contain requirements for independent peer review for ice road construction and related on-ice activities. Because the open water portion of the Northstar construction, which has the potential to adversely affect the availability of subsistence uses

of bowhead whales, was not conducted, and because an IHA for that portion of the activity was not issued, peer review of Northstar construction monitoring was neither needed nor conducted under MMPA section 101(a)(5)(D) IHA application. It should be noted that while not required for authorizations issued under section 101(a)(5)(A) of the MMPA, peer review of monitoring plans has been incorporated into these regulations in accordance with findings made at a Seattle workshop held in 1994 with the AEWC, the oil and gas industry and others.

NEPA Concerns

Comment 39: Greenpeace (3/99) contends that the Northstar DEIS and FEIS fail to provide the environmental analysis required by NEPA for incidental takes of marine mammals. Quantitative information regarding estimated harassment and ''take'' provided in BPXA's current petition for regulations was not provided in the DEIS or FEIS for Northstar. Greenpeace also believes that the DEIS and FEIS failed to analyze the environmental impacts of specific activities, such as ice road construction, gravel hauling, island construction, helicopter overflights and other forms of noise and industrial disturbance that are now described in greater detail in BPXA's current petition to NMFS.

Response: NMFS notes that qualitative impacts on marine mammals from the noise from construction, production and other activities and from oil spills were each discussed in separate chapters (Chs. 9 and 8, respectively) of the DEIS and FEIS. Additional discussion on impacts to marine mammals was provided in Chs. 6.5 and 6.9.1.1 of the DEIS and FEIS and impacts on subsistence use impacts was discussed in Chs. 7.2.1 and 7.3 of the DEIS and FEIS. In addition, a detailed description of the activity at Northstar was described in Appendix A. In review, NMFS agrees that the DEIS and FEIS did not provide sufficient information on one part of the project, the construction of ice roads. As a result of that review, an Environmental Assessment (EA) was prepared prior to issuance of the Interim IHA to BPXA on March 15, 1999. After review of the information contained in that EA, in addition to information contained in the DEIS, NMFS determined that neither the proposed action (i.e., issuance of an IHA for taking marine mammals incidental to ice road construction), nor the identified alternatives to that proposed action, would have a significant impact on the human environment.

NMFS believes that these NEPA documents support NMFS' preliminary determination that construction and oil production at Northstar will have no more than a negligible impact on affected marine mammal stocks and will not have an unmitigable adverse impact on the availability of such stocks for taking for subsistence uses.

Comment 40: Greenpeace (3/99) believes the proposed actions artificially segment the environmental review of the Northstar and Liberty projects and their impacts, thereby violating NEPA. Instead of one comprehensive review and analysis of marine mammal harassment and ''take,'' the process has been segmented into separate reviews for an interim IHA, an LOA, and the promulgation of 5-year regulations.

Response: The issue of segmenting the MMPA authorizations has been addressed previously in this document. The concern regarding segmenting under NEPA should be addressed to either the Corps or MMS.

Comment 41: Greenpeace (11/98) states that NMFS cannot rely on the Northstar DEIS for its NEPA compliance because this (IHA) authorization was not identified in the DEIS as one of the agency actions it was intended to cover.

Response: While notice of NMFS' responsibilities under the MMPA were not cited in either the notice of availability of the DEIS (63 FR 28375, May 22, 1998, or the Corps' public notice (SPN 98–3, June 1, 1998)), NMFS permitting requirements under the MMPA and Endangered Species Act (ESA) were cited in tables ES–2 and 1–2 of the DEIS and FEIS. The lack of a detailed description of each of the permit/regulatory actions listed for the several Federal, state and local agencies does not preclude adoption of the Corps'' FEIS for their action(s). Procedures for adoption by cooperating agencies are contained in Council on Environmental Quality (CEQ) regulations in 40 CFR 1506.3(c) which will be followed by NMFS.

Comment 42: Greenpeace (11/98) believes (1) the public should have the benefit of new information and responses to comments contained in the Northstar FEIS, (2) NMFS has relied on information in the DEIS which is incorrect and/or under review and subject to change in the FEIS, and (3) NMFS should deny BPXA's August 12, 1998, request for an IHA and consider a new request for construction and operation based on the FEIS.

Response: NMFS does not believe that delaying commencement of the small take authorization process until completion of NEPA documentation is warranted. Proper procedures under NOAA's NEPA guidelines are for proposed actions to accompany a DEIS or Draft EA. Not beginning the IHA process or the regulatory process until completion of NEPA leads to unnecessary and potentially extensive delays in processing applications, a problem previously recognized by Congress when it amended the MMPA to expedite the small take program. The BPXA IHA application was submitted to NMFS on August 14, 1998, in coordination with the release of the DEIS. There is no mandate for an application from a non-governmental U.S. citizen (as defined in § 216.103) to be in total agreement with a NEPA document in which it was not an active participant. NMFS determined that BPXA's application met the requirements of NMFS' regulations for applications for IHAs. The DEIS and FEIS provide NMFS with information that supports, or in some cases refutes, information found in the application. Therefore, to delay the applicant's activity in order to conduct consecutive public review instead of concurrent review is neither warranted nor required by law. Information provided in the FEIS has been analyzed by NMFS, a cooperating agency in its preparation, to assess impacts of the activity on marine mammals.

Endangered Species Act (ESA) Concerns

Comment 43: Without clarification, Greenpeace (3/99) contends that the LOAs and regulations will result in violations of both the intent and the letter of the ESA. Greenpeace (11/98) believes the requested IHA would violate the ESA because (1) the ESA requires each agency to use the best scientific information available, (2) NMFS acknowledges the conflict between offshore oil and gas development and bowheads, (3) the uncertainty of western science on the impacts of industrial noise on bowheads, and (4) research continues on the reactions of whales to noise created by oil exploration activities.

Response: On March 4, 1999, NMFS completed formal consultation with the Corps under section 7 of the ESA for the construction and operation of the Northstar project with the issuance of a Biological Opinion (BO). The BO, which found that the construction and operation of the Northstar project activity will not jeopardize the continued existence of any species under the jurisdiction of NMFS, was based upon the best scientific and commercial data available. Because issuance of an LOA to BPXA for the incidental take of bowhead whales is also considered a Federal action, NMFS

has begun consultation on this action. If the finding of NMFS is that the taking of bowhead whales is not likely to adversely affect the bowhead whale stock, prior to completion of rulemaking and if a small take authorization is determined to be appropriate, an Incidental Take Statement will be appended to the BO authorizing the incidental harassment of bowhead whales under the ESA.

Legal concerns

Comment 44: The ICAS (3/99) note that NMFS has failed to consult with ICAS over the LOAs for the take of small numbers of marine mammals by incidental harassment for construction and operation at Northstar and Liberty. ICAS requests that all regulatory activities regarding these LOAs halt. ICAS claims that the Northstar project has demonstrated that insufficient studies have been done to document an accurate picture of the Arctic ocean marine environment sufficient to monitor the LOA or loss due to harassment on the interrelations of the marine environment with subsistence resources in the event of an incidental construction-related oil spill or a catastrophic spill. ICAS has not been provided the necessary time, opportunity or resources to effectively research and comment on regulations pursuant to section 101(a) of the MMPA due to a lack of meaningful contact with NMFS pursuant to parameters consistent with Presidential Executive Orders (i.e., E.O. 13084 (May 14, 1998) and E.O. 12898 (February 11, 1994)).

Response: For many years, NMFS has consulted with the federally-recognized Alaska Native villages of Barrow, Kaktovik and Nuiqsut and the AEWC on the issuance of authorizations for the taking of bowhead whales and other marine mammals incidental to oil and gas exploration in the U.S. Beaufort Sea. In 1978, the ICAS entered into a resolution with the AEWC that provided the latter organization with the authority to enter into agreements with the Federal Government on matters pertaining to the bowhead whale. In turn, the AEWC is responsible for informing the villages of any actions taken by the Federal Government which affect subsistence whaling in Alaska. By letter, NMFS has requested ICAS to update the status of this agreement and has offered to meet with ICAS at its convenience. In the interim, NMFS intends to comply fully with E.O. 13084, Consultation and Coordination With Indian Tribal Governments.

Description of Habitat and Marine Mammal Affected by the Activity

A detailed description of the Beaufort Sea ecosystem and its associated marine mammals can be found in the DEIS and FEIS prepared for the Northstar development (Corps, 1998, 1999). This information is not repeated here but will be considered part of the record of decision for this rulemaking. A copy of the FEIS is available from the Corps upon request (see **ADDRESSES**).

Marine Mammals

The Beaufort/Chukchi Seas support a diverse assemblage of marine mammals, including bowhead whales (*Balaena mysticetus*), gray whales (*Eschrichtius robustus*), beluga whales (*Delphinapterus leucas*), ringed seals (*Phoca hispida*), spotted seals (*Phoca largha*) and bearded seals (*Erignathus barbatus*). Descriptions of the biology and distribution of these species and of others can be found in several documents (e.g., Hill and DeMaster, 1998) including the BPXA application and the previously mentioned FEIS. Please refer to those documents for specific information on these species. By citation, this information is incorporated into this document and into NMFS' decision-making process. In addition to the species mentioned in this paragraph, Pacific walrus (*Odobenus rosmarus*) and polar bears (*Urus maritimus*) also have the potential to be taken. Appropriate applications for taking these species under the MMPA have been submitted to the USFWS by BPXA.

Potential Effects on Marine Mammals

Noise Impacts

Sounds and non-acoustic stimuli will be generated during construction by vehicle traffic, ice-cutting, pipeline construction, offshore trenching, gravel dumping, sheet pile driving, and vessel and helicopter operations. Sounds and non-acoustic stimuli will be generated during oil production operations by generators, drilling, production machinery, gas flaring, camp operations and vessel and helicopter operations. The sounds generated from construction and production operations and associated transportation activities will be detectable underwater and/or in air some distance away from the area of the activity, depending upon the nature of the sound source, ambient noise conditions, and the sensitivity of the receptor. At times, some of these sounds are likely to be strong enough to cause an avoidance or other behavioral disturbance reaction by small numbers of marine mammals or to cause masking of signals important to marine mammals. The type and significance of behavioral reaction is likely to depend on the species and season, and the behavior of the animal at the time of reception of the stimulus, as well as the distance and level of the sound relative to ambient conditions.

In winter and spring, on-ice travel and construction activities will displace some ringed seals along the ice road and pipeline construction corridors. BPXA plans to begin winter construction activities in early December, well in advance of female ringed seals establishing birthing lairs beginning in late March. The noise and general human activity will displace female seals away from activity areas that could negatively affect the female and young, if birth lairs were constructed there.

During the open-water season, all six species of whales and seals could potentially be exposed to vessel or construction noise and to other stimuli associated with the planned operations. Vessel traffic is known to cause avoidance reactions by whales at certain times (Richardson *et al.*, 1995). Pile driving, helicopter operations, and possibly other activities may also lead to disturbance of small numbers of seals or whales. In addition to disturbance, some limited masking of whale calls or other low-frequency sounds potentially relevant to bowhead whales could occur.

A more detailed description of potential impacts from construction and operational activities on marine mammals can be found in the application. That information is accepted by NMFS as a summation of the best scientific information available on the impacts of noise on marine mammals in this area.

Oil Spill Impacts

For reasons stated in the application, BPXA believes that the effects of oil on seals and whales in the open waters of the Beaufort Sea are likely to be negligible, but there could be effects on whales in areas where both oil and the whales are at least partially confined in leads or at the ice edge. In the spring, bowhead and beluga whales migrate through offshore leads in the ice. However, given the probable alongshore trajectory of oil spilled from Northstar, in relation to the whale migration route through offshore waters, interactions between oil and whales are unlikely in the spring. In the summer, bowheads are not in the central Beaufort Sea, and beluga whales are found far offshore. As a result, at this time of the year, these species will be unaffected should a spill occur at this time.

In the fall, the migration route of bowheads can be close to shore. If bowheads were moving through leads in the pack ice or were concentrated in nearshore waters, some bowhead whales might not be able to avoid oil slicks and could be subject to prolonged contamination. However, the autumn migration past Northstar extends over several weeks and most of the whales travel along routes well north of Northstar. Thus, according to BPXA, only a small minority of the whales are likely to approach patches of spilled oil.

Ringed seals exposed to oil during the winter or early spring could die if exposed to heavy doses of oil for prolonged periods of time. This prolonged exposure could occur if fuel or crude oil was spilled in or reached nearshore waters, was spilled in a lead used by seals, or was spilled under the ice when seals have limited mobility. Individual seals residing in these habitats may not be able to avoid prolonged contamination and some would die. While impacts on regional distribution may occur, impacts on regional population size however, would be expected to be minor.

Estimated Level of Incidental Take

BPXA (1998) estimates that, during the ice-covered period, 62 (maximum 154) ringed seals may be incidentally harassed during construction activities and 43 (maximum 109) ringed seals may be incidentally harassed annually during oil production activities.

BPXA estimates ''takes'' during the ice-covered season by assuming that seals within 3.7 km (2.3 mi) of Seal Island, within 1.85 km (1.1 mi) of the pipeline construction corridor and related work areas, and within 0.66 km (0.4 mi) of ice roads will be ''taken'' annually. These anticipated levels of take are estimated using the average density estimate of 0.42 ringed seals/km^2 (Miller et al., 1998). BPXA (1998) cautions however, that these ''take'' estimates may result in an overestimate of the actual numbers of seals that will be ''taken'' because not all seals within these disturbance distances will move from the area.

During the open-water season, BPXA (1998) estimates that 7 (maximum 22) ringed seals, 1 spotted seal, 1–2 bearded seals, 173 (maximum 1,3800) bowhead whales, less than 5 gray whales, and 6 (maximum 45) beluga whales may be incidentally harassed annually whether from construction or operations. BPXA assumes that seals and beluga whales within 1 km (0.6 mi) radius of Seal Island will be harassed incidental to construction and other activities on the island. Assumed ''take'' radii for bowhead whales are based on the distance at which the received level of construction noise from the island would diminish below 115 dB re 1 μPa. This distance has been estimated as 3.2 km (2 mi).

Although the potential impacts to the several marine mammal species known to occur in these areas is expected to be limited to harassment, a small number of marine mammals may incur lethal and serious injury. Most effects however, are expected to be limited to temporary changes in behavior or displacement from a relatively small area near the construction site and will involve only small numbers of animals. However, the inadvertent and unavoidable take by injury or mortality of small numbers of ringed seal pups may occur during ice clearing for construction of ice roads. In addition, some injury or mortality of whales or seals may result in the event that an oil spill occurs. Therefore, BPXA requests that, because a small number of marine mammals might be injured or killed, that these takes also be covered by the regulations. However, BPXA does not indicate the level of incidental take resulting from an oil spill at Northstar during either the ice-covered period or the open-water period. Because of the unpredictable occurrence, nature, seasonal timing, duration and size of an oil spill occurring during the 5-year authorization period of these regulations, a specific prediction cannot be made of the estimated number of takes by an oil spill. According to BPXA, in the unlikely event of a major oil spill at Northstar or from the associated subsea pipeline, numbers of marine mammals killed or injured are expected to be small and the effects on the populations negligible.

Impacts on Subsistence Uses

This section contains a summary on the potential impacts from construction and operational activities on subsistence needs for marine mammals. A more detailed description can be found in the application. This information is accepted by NMFS as a summation of the best scientific information available on the impacts of noise on marine mammals in this area.

Noise Impacts

The disturbance and potential displacement of bowhead whales and other marine mammals by sounds from vessel traffic and/or on-island construction activities (e.g., impact hammering) are the principle concerns related to subsistence use of the area. The harvest of marine mammals is central to the culture and subsistence economies of the coastal North Slope communities. In particular, if elevated noise levels are displacing migrating bowhead whales farther offshore, this could make the harvest of these whales more difficult and dangerous for hunters. The harvest could also be affected if bowheads become more skittish when exposed to vessel or impact-hammering noise (BPXA, 1998).

Construction activities and associated vessel and helicopter support are expected to begin in December 1999, and continue into September or October 2000, depending upon ice conditions. Few bowhead whales approach the Northstar area before the end of August, and subsistence whaling generally does not begin until after September 1 and occurs in areas well east of the construction site. Therefore, a substantial portion of the Northstar development is expected to be completed when no bowhead whales are nearby and when no whaling is underway. Insofar as possible, vessel and aircraft traffic near areas of particular concern for whaling will be completed by BPXA before the end of August. No impact hammering is expected to occur during the period when subsistence hunting of migrating bowhead whales is underway.

Underwater sounds from drilling and production operations on an artificial gravel island are not very strong, and are not expected to travel more than about 10 km (6.2 mi). Even those bowheads traveling along the southern edge of the migration corridor will not be able to even hear sounds from Northstar until the whales are well west of the main hunting area. In addition, for reasons unrelated to mitigation for subsistence concerns, drilling activities are expected to temporarily cease during the bowhead whale migration during the first year of drilling activity.

Nuiqsut is the community closest to the area of the proposed activity, and it harvests bowhead whales only during the fall whaling season. In recent years, Nuiqsut whalers typically take zero to four whales each season (BPXA, 1998). Nuiqsut whalers concentrate their efforts on areas north and east of Cross Island, generally in water depths greater than 20 m (65 ft). Cross Island, the principle field camp location for Nuiqsut whalers, is located approximately 28.2 km (17.5 mi) east of the Northstar construction activity area.

Whalers from the village of Kaktovik search for whales east, north, and west of their village. Kaktovik is located approximately 200 km (124.3 mi) east of Seal Island. The westernmost reported harvest location was about 21 km (13 mi) west of Kaktovik, near 70°10'N.

144°W. (Kaleak, 1996). That site is approximately 180 km (112 mi) east of Seal Island.

Whalers from the village of Barrow search for bowhead whales much further from the Northstar area, greater than 250 km (>175 mi) west.

While the effects of Northstar construction or production on migrating bowheads are not expected to extend into the area where Nuiqsut hunters usually search for bowheads and therefore is not expected to affect the accessibility of bowhead whales to hunters, it is recognized that it is difficult to determine the maximum distance at which reactions occur (Moore and Clark, 1992). As a result, in order to avoid any unmitigable adverse impact on subsistence needs and to reduce potential interference with the hunt, the timing of various construction activities at Northstar as well as barge and aircraft traffic in the Cross Island area will be addressed in a C&AA between BPXA and NSB residents. Also, NMFS believes that the monitoring plan proposed by BPXA will provide information that will help resolve uncertainties about the effects of construction noise on the accessibility of bowheads to hunters.

While Northstar activity has some potential to influence subsistence seal hunting activities, the most important sealing area for Nuiqsut hunters is off the Colville delta, extending as far west as Fish Creek and as far east as Pingok Island (BPXA, 1998). Pingok Island is about 24 km (15 mi) west of Northstar. The peak season for seal hunting is during the summer months, but some hunting is conducted on the landfast ice in late spring. In summer, boat crews hunt ringed, spotted and bearded seals (BPXA, 1998). Thus, it is unlikely that construction activity will have a significant negative impact on Nuiqsut seal hunting.

Oil Spill Impacts

Oil spills might affect the hunt for bowheads (BPXA, 1998). While oil spills from production drilling or pipelines could occur at any time of the year, only if a significant spill occurred during the bowhead hunt would a reduction in the availability of bowhead whales for subsistence uses be possible. While unlikely, oil spills could extend into the bowhead hunting area under certain wind and current conditions. Even in the event of a major spill, it is unlikely that more than a small number of those bowheads encountered by hunters would be contaminated by oil (BPXA, 1998). Disturbance associated with reconnaissance and cleanup activities could affect whales and, thus, accessibility of bowheads to hunters. Therefore, in the unlikely event that a major spill occurred during the relatively short fall bowhead whaling season, it is possible that bowhead hunting would be significantly affected. However, the probability of a large oil spill (greater than 1,000 barrels) is estimated to be approximately 3 percent.

Impacts on Habitat

Invertebrates and fish, the nutritional basis for those whales and seals found in the Beaufort Sea, may be affected by construction and operation of the Northstar project. Fish may react to noise from Northstar with reactions being quite variable and dependent upon species, life history stage, behavior, and the sound characteristics of the water. Invertebrates are not known to be affected by noise. Benthic invertebrates would be affected by island and pipeline construction and overburden placement on the seabottom. Fish may be temporarily or permanently displaced by the island. These local, short-term effects are unlikely to have an impact on marine mammal feeding.

In the event of a large oil spill, fish and zooplankton in open offshore waters are unlikely to be seriously affected. Fish and zooplankton in shallow nearshore waters could sustain heavy mortality if an oil spill were to remain within an area for several days or longer. These affected nearshore areas may then be unavailable for use as feeding habitat for seals and whales. However, because these seals and whales are mobile, and bowhead feeding is uncommon along the coast near Northstar, effects would be minor during the open water season. In winter, effects of an oil spill on ringed seal food supply and habitat would be locally significant in the shallow nearshore waters in the immediate vicinity of the spill and oil slick. However, effects overall would be negligible.

Proposed Mitigation Measures

Several mitigation measures have been proposed by BPXA to reduce harassment takes to the lowest level practicable. These include:

(1) BPXA will begin winter construction activities in December, well in advance of female ringed seals establishing the birthing lair in late March in order to displace seals away from activities that could negatively affect the female and young.

(2) If construction activities are initiated in previously undisturbed areas after March 20, BPXA will survey the area(s) to identify and avoid ringed seal lairs by a minimum of 150 m (492 ft).

(3) BPXA will establish and monitor a 190 dB re 1 μPa safety range for seals around the island for those construction activities with SPLs that exceed that level.

(4) While whales are unlikely to approach the island during impact hammering or other noisy activities, a 180 dB re 1 μPa safety zone will be established and monitored around the island.

(5) If any marine mammals are observed within their respective safety range, operations will cease until such time as the observed marine mammals have left the safety zone.

(6) Project scheduling indicates that impact hammering will not occur during the period for subsistence hunting of westward migrating bowhead whale.

(7) Helicopter flights to support Northstar construction will be limited to a corridor from Seal Island to the mainland, and, except when limited by weather, will maintain a minimum altitude of 1,000 ft (305 m).

(8) Drilling activities will temporarily cease during the bowhead whale migration during the first year of drilling activity (i.e., September, 2001).

Proposed Monitoring Measures

Monitoring will employ both marine mammal observations and acoustics measurements and recordings. During the open-water period, monitoring will consist of (1) acoustic measurements of sounds produced by construction activities through hydrophones, seaborne sonobuoys and bottom recorders, and (2) observations of marine mammals from an elevated platform on Seal Island which will be made during periods with and without construction underway.

During the ice-covered season, BPXA proposes to continue an ongoing (since the spring, 1997) Before-After/Control-Impact Study on the distribution and abundance of ringed seals in relation to development of the offshore oil and gas resources in the central Beaufort Sea. Collection and analysis of data before and after construction is expected to provide a reliable method for assessing the impact of oil and gas activities on ringed seal distribution in the Northstar construction area. Other winter/spring monitoring will include (1) on-ice searches for ringed seal lairs in areas where construction starts in the mid-March through April period, (2) assessment of abandonment rates for seal holes, and (3) acoustic measurements of sounds and vibrations from construction.

The monitoring plan will be subject to review by NMFS biologists and revised appropriately prior to implementation. Independent peer review on the on-ice portion of the plan will be conducted this fall in Seattle. The open-water season monitoring plan has been reviewed by scientists and others attending the annual open-water peer-review workshop held in Seattle on July 1, 1999. A revised monitoring plan was submitted to NMFS on August 27, 1999. A copy of the revised monitoring plan is available upon request (see **ADDRESSES**).

Proposed Reporting Measures

NMFS proposes to require BPXA to provide two reports annually to NMFS within 90 days of completion of each phase of the activity. The first report would be due 90 days after either the ice roads are no longer usable or spring aerial surveys are completed, whichever is later. The second report would be required to be forwarded to NMFS 90 days after the formation of ice in the central Alaskan Beaufort Sea prevents water access to Northstar. These reports will provide summaries of the dates and locations of construction activities, details of marine mammal sightings, estimates of the amount and nature of marine mammal takes, and any apparent effects on accessibility of marine mammals to subsistence hunters.

A draft final technical report would be submitted to NMFS by April 1 of each year. The final technical report would contain a full description of the methods, results, and interpretation of all monitoring tasks. The draft final report will be subject to peer review before being finalized by BPXA.

Preliminary Conclusions

Northstar Construction

NMFS has preliminarily determined that the impact of construction and operation of the Northstar project in the U.S. Beaufort Sea will result in no more than a temporary modification in behavior by certain species of cetaceans and pinnipeds. During the ice-covered season, pinnipeds close to the island may be subject to incidental harassment due to the localized displacement from construction of ice roads, from transportation activities on those roads, and from construction activities at Northstar. As cetaceans will not be in the area during the ice-covered season, they will not be affected.

During the open-water season, the principal construction- and operations-related noise activities will be impact hammering, helicopter traffic, vessel traffic, and other general construction activity on Seal Island. Sheet-pile driving is expected to be completed prior to whales being present in the area. Sounds from construction activities on the island are not expected to be detectable more than about 5–10 km (3.1–6.2 mi) offshore of the island. Disturbance to bowhead or beluga whales by on-island activities will be limited to an area substantially less than that distance. Helicopter traffic will be limited to nearshore areas between the mainland and the island and is unlikely to approach or disturb whales. Barge traffic will be located mainly inshore of the whales and will involve vessels moving slowly, in a straight line, and at constant speed. Little disturbance or displacement of whales by vessel traffic is expected. While behavioral modifications may be made by these species to avoid the resultant noise, this behavioral change is expected to have no more than a negligible impact on the animals.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals (which vary annually due to variable ice conditions and other factors) in the area of operations, because the proposed activity is in shallow waters inshore of the main migration corridor for bowhead whales and far inshore of the main migration corridor for belugas, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment will be avoided through the incorporation of the mitigation measures mentioned in this document. No rookeries, areas of concentrated mating or feeding, or other areas of special significance for marine mammals occur within or near the planned area of operations during the season of operations.

Because bowhead whales are east of the construction area in the Canadian Beaufort Sea until late August/early September, activities at Northstar are not expected to impact subsistence hunting of bowhead whales prior to that date. Appropriate mitigation measures to avoid an unmitigable adverse impact on the availability of bowhead whales for subsistence needs will be the subject of consultation between BPXA and subsistence users.

Also, while construction at Northstar has some potential to influence seal hunting activities by residents of Nuiqsut, because (1) the peak sealing season is during the winter months, (2) the main summer sealing is off the Colville Delta), and (3) the zone of influence from Northstar on beluga and seals is fairly small, NMFS believes that Northstar construction will not have an unmitigable adverse impact on the availability of these stocks for subsistence uses.

Endangered Species Act (ESA)

NMFS concluded consultation with the Corps on this activity on March 4, 1999. If an authorization to incidentally take listed marine mammals is issued under the MMPA, NMFS will complete consultation under the ESA on the regulations and the LOA and issue an Incidental Take Statement under section 7 of the ESA. A copy of the BO resulting from this consultation is available upon request (see **ADDRESSES**).

NEPA

On June 12, 1998 (63 FR 32207), the Environmental Protection Agency (EPA) noted the availability for public review and comment a DEIS prepared by the Corps under NEPA on Beaufort Sea oil and gas development at Northstar. Comments on that document were accepted by the Corps until August 31, 1998 (63 FR 43699, August 14, 1998). On February 5, 1999 (64 FR 5789), EPA noted the availability for public review and comment, a FEIS prepared by the Corps under NEPA on Beaufort Sea oil and gas development at Northstar. Comments on that document were accepted by the Corps until March 8, 1999. A copy of the FEIS is available upon request (see **ADDRESSES**).

NMFS is a cooperating agency, as defined by the CEQ regulations (40 CFR 1501.6), on the preparation of this document. The FEIS on this activity, which supplements information contained in the BPXA application, is considered part of NMFS' record of decision on this matter. Preliminarily, it also meets NOAA's NEPA responsibilities for determining whether the activity proposed for receiving a small take authorization is having a negligible impact on affected marine mammal stocks and not having an unmitigable adverse impact on subsistence needs. Based upon a review of the FEIS and the comments received during this rulemaking, NMFS will either (1) adopt the Corps FEIS, (2) amend the Corps FEIS to incorporate relevant comments, suggestions and information, or (3) prepare supplemental NEPA documentation.

Classification

This action has been determined by the Office of Management and Budget to be significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. If implemented, this rule will affect only one or two large oil producing companies which, by definition, are not small businesses. It will also affect a small number of contractors providing services related to monitoring the impact of oil development in the Beaufort Sea on marine mammals. Some of the affected contractors may be small businesses, but the number involved would not be substantial. Further, since the monitoring requirement is what would lead to the need for their services, the economic impact on them would be beneficial. For all the above reasons, a regulatory flexibility analysis is not required.

This proposed rule contains collection-of-information requirements subject to the provisions of the Paperwork Reduction Act (PRA). These requirements have been approved by OMB under control number 0648–0151, and include an application for an LOA, an interim report, and a final report. Other information requirements in the rule are not subject to the PRA since they apply only to a single entity and therefore are not contained in a rule of general applicability.

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 PRA unless that collection of information displays a currently valid OMB control number.

The reporting burden for the approved collections-of-information are estimated to be approximately 3 hours for an application for a LOA, and 80 hours each for interim and final reports. These estimates include the time for reviewing instructions, searching existing data sources, gathering an maintaining the data needed, and completing and reviewing the collection-of-information. Send comments regarding these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning the BPXA request and the content of the proposed regulations to authorize the taking. All commenters are requested to review the application prior to submitting comments and not submit comments solely on this **Federal Register** document.

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: October 15, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. Subpart R is added to part 216 to read as follows:

Subpart R–Taking of Marine Mammals Incidental to Construction and Operation of Offshore Oil and Gas Platforms in the U.S. Beaufort Sea

Sec.

216.200 Specified activity and specified geographical region.
216.201 Effective dates.
216.202 Permissible methods of taking.
216.203 Prohibitions.
216.204 Mitigation.
216.205 Measures to ensure availability of species for subsistence uses.
216.206 Requirements for monitoring and reporting.
216.207 Applications for Letters of Authorization.
216.208 Letters of Authorization.
216.209 Renewal of Letters of Authorization.
216.210 Modifications to Letters of Authorization.

Subpart R—Taking of Marine Mammals Incidental to Construction and Operation of Offshore Oil and Gas Platforms in the U.S. Beaufort Sea

§ 216.200 Specified activity and specified geographical region.

Regulations in this subpart apply only to the incidental taking of those marine mammal species specified in paragraph (b) of this section by U.S. citizens engaged in oil and gas development activities in areas within state and/or Federal waters in the U.S. Beaufort Sea specified in paragraph (a) of this section. The authorized activities as specified in a Letter of Authorization issued under §§ 216.106 and 216.208 include, but may not be limited to, site construction, including ice road and pipeline construction, vessel and helicopter activity; and oil production activities, including ice road construction, and vessel and helicopter activity, but excluding seismic operations.

(a)(1) Northstar Oil and Gas Development Unit on Seal Island; and

(2) [Reserved]

(b) The incidental take by harassment, injury or mortality of marine mammals under the activity identified in this section is limited to the following species: bowhead whale (*Balaena mysticetus*), gray whale (*Eschrichtius robustus*), beluga whale (*Delphinapterus leucas*), ringed seal (*Phoca hispida*), spotted seal (*Phoca largha*) and bearded seal (*Erignathus barbatus*).

§ 216.201 Effective dates.

Regulations in this subpart are effective from January 1, 2000, through December 31, 2004.

§ 216.202 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 216.208, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals by harassment, injury, and mortality within the area described in § 216.200(a), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in § 216.200 must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals, their habitat, and on the availability of marine mammals for subsistence uses.

§ 216.203 Prohibitions.

Notwithstanding takings authorized by § 216.200 and by a Letter of Authorization issued under §§ 216.106 and 216.208, no person in connection with the activities described in § 216.200 shall:

(a) Take any marine mammal not specified in § 216.200(b);

(b) Take any marine mammal specified in § 216.200(b) other than by incidental, unintentional harassment, injury or mortality;

(c) Take a marine mammal specified in § 216.200(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of

these regulations or a Letter of Authorization issued under § 216.106.

§ 216.204 Mitigation.

The activity identified in § 216.200(a) must be conducted in a manner that minimizes, to the greatest extent possible, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 216.200, the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 216.208 must be utilized.

§ 216.205 Measures to ensure availability of species for subsistence uses.

When applying for a Letter of Authorization pursuant to § 216.207, or a renewal of a Letter of Authorization pursuant to § 216.209, the applicant must submit a Plan of Cooperation that identifies what measures have been taken and/or will be taken to minimize any adverse effects on the availability of marine mammals for subsistence uses. A plan must include the following:

(a) A statement that the applicant has notified and met with the affected subsistence communities to discuss proposed activities and to resolve potential conflicts regarding timing and methods of operation;

(b) A description of what measures the applicant has taken and/or will take to ensure that oil development activities will not interfere with subsistence whaling or sealing;

(c) What plans the applicant has to continue to meet with the affected communities to notify the communities of any changes in operation.

§ 216.206 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization issued pursuant to §§ 216.106 and 216.208 for activities described in § 216.200 are required to cooperate with the National Marine Fisheries Service, and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Administrator, Alaska Region, National Marine Fisheries Service, or his/her designee, by letter or telephone, at least 2 weeks prior to initiating activities possibly involving the taking of marine mammals.

(b) Holders of Letters of Authorization must designate qualified on-site individuals, approved in advance by the National Marine Fisheries Service, to conduct the mitigation, monitoring and reporting activities specified in the Letter of Authorization issued pursuant to § 216.106 and § 216.208.

(c) Holders of Letters of Authorization must conduct all monitoring and/or research required under the Letter of Authorization.

(d) The Holder of the Letter of Authorization must submit an interim report to the Director, Office of Protected Resources, National Marine Fisheries Service, no later than 180 days prior to expiration of the Letter of Authorization. This report must contain all information required by the Letter of Authorization.

(e) A final comprehensive report must be submitted to the National Marine Fisheries Sevice at least 240 days prior to expiration of these regulations.

§ 216.207 Applications for Letters of Authorization.

(a) To incidentally take bowhead whales and other marine mammals pursuant to these regulations, the U.S. citizen (see definition at § 216.103) conducting the activity identified in § 216.200, must apply for and obtain either a Letter of Authorization in accordance with §§ 216.106 and 216.208, or a renewal under § 216.209.

(b) The application for a Letter of Authorization must be submitted to the National Marine Fisheries Service at least 180 days before the activity is scheduled to begin.

(c) Applications for Letters of Authorization must include all information items identified in § 216.104(a).

(d) NMFS will review an application for a Letter of Authorization in accordance with § 216.104(b) and, if adequate and complete, will publish a notice of receipt of a request for incidental taking and, in accordance with Administrative Procedure Act requirements, a proposed amendment to § 216.200(a). In conjunction with amending § 216.200(a), the National Marine Fisheries Service will provide a minimum of 45 days for public comment on the application.

(e) Upon receipt of a complete application, and at its discretion, the National Marine Fisheries Service may submit the monitoring plan to members of a peer review panel for review and/or schedule a workshop to review the plan. Unless specified in the Letter of Authorization, the applicant must submit a final monitoring plan to the Assistant Administrator prior to the issuance of a Letter of Authorization.

§ 216.208 Letters of Authorization.

(a) A Letter of Authorization, unless suspended, revoked or not renewed, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in § 216.209.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting, including any requirements for the independent peer-review of proposed monitoring plans.

(c) Issuance of each Letter of Authorization will be based on a determination that the number of marine mammals taken by the activity will be small, that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the species or stock of affected marine mammal(s), and will not have an unmitigable adverse impact on the availability of species or stocks of marine mammals for taking for subsistence uses.

(d) Notice of issuance or denial of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 216.209 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under § 216.106 and § 216.208 for the activity identified in § 216.200 will be renewed annually upon:

(1) Notification to the National Marine Fisheries Service that the activity described in the application submitted under § 216.207 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season;

(2) Timely receipt of the monitoring reports required under § 216.205, which have been reviewed by the National Marine Fisheries Service and determined to be acceptable, and the Plan of Cooperation required under § 216.205; and

(3) A determination by the National Marine Fisheries Service that the mitigation, monitoring and reporting measures required under § 216.204 and the Letter of Authorization were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 216.208 indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the

upcoming season will occur, the National Marine Fisheries Service will provide the public a period of 30 days for review and comment on the request.

(c) A notice of issuance or denial of a Renewal of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 216.210 Modifications to Letters of Authorization.

(a) In addition to complying with the provisions of §§ 216.106 and 216.208, except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization issued pursuant to §§ 216.106 and 216.208 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 216.209, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.200(b), a Letter of Authorization issued pursuant to §§ 216.106 and 216.208 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action.

[FR Doc. 99–27578 Filed 10–21–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 990927266–9266–01; I.D. 072699A]

RIN 0648–AM62

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar

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

ACTION: Advance Notice of Proposed Rulemaking; request for comment and information.

SUMMARY: NMFS has received a request for a Letter of Authorization (LOA) from the U.S. Navy for the take of small numbers of marine mammals by harassment incidental to Navy operations of Surveillance Towed Array Sensor System (SURTASS) Low Frequency Active (LFA) Sonar. In order to issue an LOA, NMFS must promulgate regulations and determine that these takings will have a negligible impact on the affected species and stocks of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. NMFS invites comment on the application, and suggestions on the content of the regulations.

DATES: Comments and information must be postmarked no later than November 22, 1999.

ADDRESSES: Comments should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226. A copy of the application may be obtained by writing to this address or by telephoning one of the contacts listed here (see FOR FURTHER INFORMATION CONTACT). A copy of the draft environmental impact statement (DEIS) for SURTASS LFA sonar may be obtained by contacting Mr. J.S. Johnson, SURTASS-LFA Sonar Program Manager, 901 North Stewart Street, Suit 708, Arlington, VA 22203. Comments on the DEIS will be accepted at this address until October 28, 1999.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead (301) 713–2055, ext. 128.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the taking will have a negligible impact on the species or stock(s) of affected marine mammals, will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking.

Summary of Request

On August 12, 1999, NMFS received an application from the U.S. Navy requesting a small take exemption under section 101(a)(5)(A) of the MMPA for the taking of marine mammals by harassment incidental to operation of the SURTASS LFA sonar for a period of time not to exceed 5 years, beginning in FY 2000. SURTASS LFA sonar will operate a maximum of 4 ship systems in the ten geographic operating regions in which SURTASS LFA sonar could potentially operate. There would be a maximum of four SURTASS LFA sonar systems with a nominal maximum of two systems at sea at any one time.

Description of the Activity

The SURTASS LFA sonar system is a long-range, low frequency (between 100 and 500 Hertz) sonar that has both active and passive components. It does not rely on detection of noise generated by the target. The active component of the system is a set of low frequency (LF) acoustic transmitting source elements (called projectors) suspended from a cable from underneath a ship. The projectors are devices that produce the active sound or pulse.

The typical SURTASS LFA sonar signal is not a constant tone, but rather a transmission of various waveforms that vary in frequency and duration. A complete sequence of sound transmissions is referred to as a ''ping'' and can last for as short as 6 seconds (sec) to as long as 100 sec. The time between pings is typically from 6 to 15 minutes. Average duty cycle (ratio of sound ''on'' time to total time) can be controlled but is less than 20 percent; typical duty cycle is between 10 and 20 percent.

The passive or listening component of the system is SURTASS, which detects returning echoes from submerged objects, such as submarines, through the use of hydrophones. The hydrophones are mounted on a horizontal array that is towed behind the ship. The SURTASS LFA sonar ship maintains a minimum speed of 5.6 km/hr (3.0 knots).

The Navy anticipates that a nominal, or typical SURTASS LFA sonar deployment schedule for a single vessel would involve about 270 days/year at sea (underway). A typical at-sea mission would occur over a 30-day period, made up of two 9-day exercise segments. Active sonar operations could be conducted up to 20 hrs during an exercise day, although the system would actually be transmitting for only a

maximum of 4 hrs/day (resulting in 432 hrs of active transmission time per year for each SURTASS LFA sonar system in operation based on a maximum duty cycle of 20 percent). The remaining 12 days of the at-sea mission would be spent in transit or repositioning the vessel. In a nominal year there could be a maximum of 9 missions, six of which would involve the employment of SURTASS LFA sonar in the active mode and three of which would employ the SURTASS LFA sonar in the passive mode. Between missions, an estimated 95 days would be spent in port for upkeep and repair. With two vessels in the Pacific-Indian Ocean area and two vessels in the Atlantic Ocean-Mediterranean Sea area, there could be up to 12 operations in each area per year.

At present, only one SURTASS LFA sonar system is operational. A second SURTASS LFA sonar system is expected to be operational in FY 2000. The third and fourth systems are tentatively planned for FY 2003 and FY 2004, but their delivery may be postponed until after FY 2005. With 4 systems, a nominal maximum of two vessels would be at sea at any one time. As a result, under 5-year regulations NMFS would propose to authorize marine mammal harassment takings for 2 SURTASS LFA sonar vessels for FY 2000 through FY 2002, 3 vessels for FY 2003, and 4 vessels for FY 2004.

Affected Marine Mammal Species

In their DEIS analysis and small take application, the Navy excluded from take consideration those marine mammal species that either do not inhabit the areas wherein SURTASS LFA sonar would operate or do not possess sensory mechanisms that allow the mammal to perceive low frequency (LF) sounds. Where data was not available or was insufficient for one species, comparable data for a related species was used, if available. Because all species of baleen whales produce LF sounds, and anatomical evidence strongly suggests that their inner ears are well adapted for LF hearing, all species are considered sensitive to LF sound and at risk from exposure to LF sounds. The ten species of baleen whales that may be affected by SURTASS LFA sonar are: blue (*Balaenoptera musculus*), fin (*Balaenoptera physalus*), minke (*Balaenoptera acutorostrata*), Bryde's (*Balaenoptera borealis*), sei (*Balaenoptera borealis*), humpback (*Megaptera novaeangliae)*, northern right (*Eubalaena glacialis*), southern right (*Eubalaena australis*), pygmy right (*Capera marginata*), and gray whales (*Eschrichtius robustus*).

The odontocetes (toothed whales) that may be affected because they inhabit the deeper, offshore waters where SURTASS LFA sonar might operate include both the pelagic (oceanic) whales and dolphins and those coastal species that also occur in deep water including *Stenella spp*., Risso's dolphin (*Grampus griseus*), rough-toothed dolphin (*Steno bredanensis*), Fraser's dolphin (*Lagenodelphis hosei*), right-whale dolphin (*Lissodelphis spp*.), *Lagenorhynchus spp*., *Cephalorhynchus spp*., bottlenose dolphin (*Tursiops truncatus*), common dolphin (*Delphinus delphis*), Dall's porpoise (*Phocoenoides dalli*), melon-headed whale (*Peponocephala spp*.), beaked whales (*Berardius spp*., *Hyperoodon spp*., *Mesoplodon spp*., Cuvier's beaked whale (*Ziphius cavirostris*), Shepard's beaked whale (*Tasmacetus shepherdi*), Longman's beaked whale (*Indopacetus pacificus*), killer whale (*Orcinus orca*), false killer whale (*Pseudorca crassidens*), pygmy killer whale (*Feresa attenuata*), sperm whale (*Physeter macrocephalus*, *Kogia spp*.), and pilot whale (*Globicephala spp*.).

Potentially affected pinnipeds include: 8 phocid (true seal) species including, the Hawaiian and Mediterranean monk seals (*Monachus spp*.), harbor seals (*Phoca spp*), and elephant seals (*Mirounga spp*.); 8 species of fur seals (*Arctocephalus spp*., *Callorhinus ursinus*); and 5 species of sea lions, including the Steller sea lion (*Eumetopias jubatus*) and California sea lion (*Zalophus californianus*).

A description of affected marine mammal species and the criteria used to determine those species that have the potential for taking by harassment are provided and explained in detail in the Navy application and DEIS and need not be repeated here.

Impacts to Marine Mammals

The analysis of potential impacts on marine mammals was developed by the Navy based on the results of a literature review, the Navy's LF Sound Scientific Research Program (LFS SRP), and a complex, comprehensive program of underwater acoustical modeling. To assess potential impact of the SURTASS LFA sonar source on marine mammals operating at a given site, it was necessary for the Navy to predict the sound field that a given marine mammal species could be exposed to over time. This is a multi-part process involving (1) the ability to measure or estimate an animal's location in space and time, (2) the ability to measure or estimate the three-dimensional sound field at these times and locations, (3) the integration of these two data sets to estimate the total acoustic exposure for each animal in the modeled population, (4) converting the resultant cumulative exposures for a modeled population into an estimate of the risk from a prolonged disruption of a biologically important behavior, and (5) converting these estimates of behavioral risk into an assessment of risk in terms of the level of potential biological removal.

Next, a relationship for converting the resultant cumulative exposures for a modeled population into an estimate of the risk to the entire population of a prolonged disruption of a biologically important behavior and of injury was developed. This process assessed risk in relation to received level (RL) and repeated exposure. The resultant ''risk continuum'' is based on the assumption that the threshold of risk is variable and occurs over a range of conditions rather than at a single threshold.

Taken together, the LFS SRP results, the acoustical modeling, and the risk assessment, provide an estimate of potential environmental impacts to marine mammals.

The acoustical modeling process was accomplished using the Navy's standard acoustical performance prediction transmission loss model–Parabolic Equation (PE) version 3.4. The results of this model are the primary input to the Acoustic Integration Model (AIM). AIM was used to estimate mammal sound exposures and essentially integrates simulated movements (including dive patterns) of marine mammals, a schedule of SURTASS LFA sonar transmissions, and the predicted sound field for each transmission to estimate acoustic exposure during a hypothetical SURTASS LFA sonar operation. Description of the PE and AIM models, including AIM input parameters for animal movement, diving behavior, and marine mammal distribution, abundance, and density are described in detail in the Navy application and the DEIS and are not discussed further in this document.

Using the AIM model, the Navy developed 31 acoustic modeling scenarios for the major ocean regions (which are described in the application and DEIS). Locations were carefully selected to represent reasonable ''worst case'' scenarios for each of the three major ocean acoustic regimes where SURTASS LFA sonar would be employed. These acoustic regimes were (1) deep-water convergence propagation zone, (2) near surface duct propagation zone, and (3) shallow water bottom interaction propagation zone. These scenarios represent the condition under

which, on average, the greatest number of animals could be exposed to the greatest number of pings at the highest RLs and were considered the most severe conditions that could be expected from operation of the SURTASS LFA sonar system. Thus, if SURTASS LFA sonar operations were conducted in an area that was not acoustically modeled, the potential effects would almost certainly be less than those obtained from the most similar scenario in the analysis.

Risk Analysis

The Navy interprets the results of the LFS SRP to justify use of unlimited exposure during a mission to 120 dB as the lowest value for risk. Below this level, there is no risk of prolonged biologically significant responses from marine mammals. It is important to note that risk varies with both level and number of exposures.

The Navy calculated the risks for take by injury based on criteria of 180 dB RL, which is a conservative value for the onset of a minor temporary threshold (TTS) shift in hearing (see Ridgway *et al.* (1997)). Ridgway *et al.*'s (1997) measurement at one second duration implies that the TTS threshold for a 100–second signal lies between 182 and 172 dB, depending upon the formula used. The Navy believes that the 180–dB single ping criterion can be considered conservative. However, the RL for serious injury would be much higher, and the marine mammal would have to be much closer to the array than the 2 km (1.1 nm) radius around the vertical array delineating the 180 dB sound field. With three levels of mitigation monitoring for marine mammals (described later in this document), it is unlikely that any marine mammal would get that close before either turning away from the annoyance, or being detected and the SURTASS LFA sonar shut down (see Mitigation). However, because the probability is not zero, the Navy has included this scenario in its authorization request.

Mitigation and Monitoring

SURTASS LFA sonar operations would be conducted to ensure that the sound field does not exceed 180 dB re 1 μPa_{rms} (i.e., the zone of potential injury for marine mammals) within 22 km (12 nm) of any coastline, nor in offshore biologically important areas that are outside the 22 km (12 nm) zone during the biologically important season(s) for that particular area.

SURTASS LFA sonar operators would estimate sound pressure levels prior to and during operations to provide the information necessary to modify operations, including delay or suspension of transmissions, in order not to exceed the sound field criteria. Please refer to the Navy's application for the criteria used to determine biologically important areas.

In order to minimize risks to potentially affected marine mammals that may be present in waters surrounding SURTASS LFA sonar, the Navy will: (1) Conduct visual monitoring from the ship's bridge during daylight hours, (2) use passive (LF) SURTASS LFA sonar to listen for vocalizing marine mammals; and (3) use high frequency (HF) active sonar (i.e., commercial fish finder) to monitor/locate/track marine mammals in relation to the SURTASS LFA sonar vessel and the sound field produced by the SURTASS LFA sonar source array.

Through observation, acoustic tracking and establishment of shut-down criteria, the Navy will ensure that no marine mammals approach the SURTASS LFA sonar source close enough to be subjected to potentially harmful sound levels (inside the 180 dB re 1 μPa_{rms} sound field; approximately 2 km (1.1 nm) from the source). The Navy estimates that the probability of detecting a marine mammal within the 180 dB sound field of the source array by at least one of these monitoring methods is estimated to be between 70 and 99 percent. However, nominally, an effectiveness of 80 percent is used in the take calculations. This assumption incorporates the 70 percent effectiveness of the HF sonar, and an additional conservative 5– percent contribution each for visual and passive monitoring. In general, small, solitary marine mammals would be the most difficult to detect, while large whales and dolphin schools would be much easier to detect.

Reporting

During routine operations of SURTASS LFA sonar, technical and environmental data would be collected and recorded. These would include data from visual and acoustic monitoring, ocean environmental measurements, and technical operational inputs. This information would become part of the data required from the Long Term Monitoring (LTM) Program.

Research

The Navy proposes to provide a LTM program to conduct annual assessments of the potential cumulative impact of SURTASS LFA sonar operations on the marine environment, provide the necessary reporting to increase knowledge of the species, and to coordinate research opportunities and activities. This would include cumulative impact analyses of the annually tabulated injuries (if any) and harassments over the next 5 years.

While research conducted to date is sufficient to assess impacts on marine mammals, it is prudent to continue research over the course of the first 5 years of the Navy's operations of SURTASS LFA sonar.

The purpose of the LTM program would be to continue scientific data collection once SURTASS LFA sonar is deployed.

Conclusions

Based on the scientific analyses detailed in the Navy application and further supported by the DEIS for SURTASS LFA sonar operations, the Navy concludes that the incidental taking of marine mammals resulting from SURTASS LFA sonar operations would be small and have no more than a negligible impact on the affected marine mammal stocks or habitats. This conclusion is particularly supported by the proposed mitigation measures that would be implemented for all SURTASS LFA sonar operations and the proposed LTM program. The former includes geographic restrictions, monitoring and reporting that would result in increased knowledge of marine mammal species. The latter offers means of learning of, encouraging, and coordinating research opportunities, plans, and activities relating to reducing the incidental taking of marine mammals from anthropogenic underwater sound, and evaluating the possible long-term effects from exposing marine mammals to anthropogenic underwater sound.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning the Navy's request for a single LOA valid for SURTASS LFA sonar operations in all 10 biogeographic regions, and the structure and content of the regulations to allow takings by LFA sonar operations. NMFS would propose a single set of regulations, effective for a period of time up to 5 years, that would govern incidental takings for LFA sonar operations. All commenters are requested to review the DEIS and/or the application prior to submitting comments and, because of its brevity, not submit comments solely on this **Federal Register** document.

NMFS is also requesting comment on an alternative proposal to issue annual LOAs to each vessel as it becomes operational. Based upon applications for annual LOAs, individual vessel LOAs

may specify which of the 10 operating areas were scheduled for the upcoming year. For security reasons, locations and times for certain operations may be classified and not provided to the public.

If NMFS proposes regulations governing the taking, interested parties will be provided a 45-day comment period on the content of the proposed rule.

This action has been determined to be not significant for purposes of Executive Order 12866.

Dated: October 15, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–27579 Filed 10–21–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 204
Friday, October 22, 1999

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

Office of Outreach

Notice of Intent To Seek Approval To Conduct an Information Collection

AGENCY: Office of Outreach, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the Office of Outreach's intention to request approval for a new information collection, the USDA Minority Farm Register.

DATES: Comments on this notice must be received by December 27, 1999 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Contact Charles Whitaker, Office of Outreach, 542–A Jamie Whitten Federal Building, Washington, DC 20250, (202) 720–6350.

SUPPLEMENTARY INFORMATION:

Title: USDA Minority Farm Register.

Type of Request: Intent to seek approval to conduct an information collection.

Abstact: The purpose of this information collection is to create a Minority Farm Register which is a voluntary register of minority land owners that documents the amount of farmland owned by minorities. The Minority Farm Register will establish a baseline for the amount of farmland owned by minority land owners in order to help the USDA set goals to halt the reduction in minority-owned farm land, monitor the loss of minority-owned farms, and locate minority farmers for the purpose of informing them of USDA and other programs that may benefit them. The concept was generated by Recommendation #28 of the Report of the Civil Rights Action Team to the Secretary of Agriculture entitled Civil Rights at the United States Department of Agriculture, dated February 1997. The Minority Farm Register will be administered by the Office of Outreach. A specific register sign-up form will be issued in Spanish and English. Informational registration material will be distributed to Community Based Organizations, educational institutions, and government agencies assisting minorities with land retention and acquisition and will be distributed on the Internet to ensure the program is widely publicized and accessible to all. The Office of Outreach is requesting a 3 year approval.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: Individuals or households.

Estimated Number of Respondents: 54,000.

Estimated Total Annual Burden on Respondents: 4,500 hours.

Copies of this information collection and related instructions can be obtained without charge from Charles Whitaker at (202) 720–6350.

Comments

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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Charles Whitaker, Office of Outreach, U.S. Department of Agriculture, 542–A Jamie Whitten Federal Building, Washington, DC 20250.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, September 15, 1999.

Sharron L. Harris,

Acting Director, Office of Outreach.

[FR Doc. 99–27658 Filed 10–21–99; 8:45 am]

BILLING CODE 3410–20–M

DEPARTMENT OF AGRICULTURE

Forest Service

Oregon Coast Provincial Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Oregon Coast Provincial Advisory Committee (PAC) will meet on November 4, 1999, at the Bureau of Land Management, 1717 Fabry Road (SE), Salem, Oregon. The meeting will begin at 9:00 a.m. and continue until 3:30 p.m. Agenda items to be covered include: (1) Information sharing among PAC Members, and (2) National Forest System Land and Resource Management Planning; Proposed Rule. Committee meetings are open to the public. One 30-minute open public forum is scheduled for 10:00 a.m. Interested citizens are encouraged to attend. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Joni Quarnstrom, Public Affairs Specialist, Siuslaw National Forest (541–750–7075), or write to the Acting Forest Supervisor, Siuslaw National Forest, P.O. Box 1148, Corvallis, Oregon 97339.

Dated: October 15, 1999.

Jose L. Linares,

Acting Forest Supervisor.

[FR Doc. 99–27590 Filed 10–21–99; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletion and Suspension of Effective Date of Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletion and suspension of effective date of addition to procurement list.

SUMMARY: The Committee has received a proposal to delete a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities and to suspend the effective date of the addition of the service to the Procurement List.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 22, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

The service was added to the Procurement List by notice published in the September 24, 1999, **Federal Register** (64 FR 51734). Pending a decision on this deletion proposal, the effective date of the addition (October 25, 1999) is suspended.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service deleted from the Procurement List.

The following service has been proposed for deletion from the Procurement List:

Full Food and Dining Facility Attendant, Fort Polk, Louisiana

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–27661 Filed 10–21–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 22, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Base Supply Center, Detroit Arsenal, Warren, Michigan
NPA: Associated Industries for the Blind, Milwaukee, Wisconsin

Base Supply Center, Pope Air Force Base, North Carolina
NPA: Lions Club Industries, Inc., Durham, North Carolina

Base Supply Center and Operation of Individual Equipment Element Store, Grand Forks Air Force Base, North Dakota
NPA: Envision, Inc., Wichita, Kansas

Grounds Maintenance, Southern Maryland District Courthouse, 6500 Cherrywood Lane, Greenbelt, Maryland
NPA: The Arc of Montgomery County, Inc., Rockville, Maryland

Janitorial/Grounds Maintenance

Evo DeConcini Federal Courthouse, 405 West Congress Street, Tucson, Arizona
NPA: Tetra Corporation, Tucson, Arizona

Operation of Individual Equipment Element Store, Lackland Air Force Base, Texas
NPA: San Antonio Lighthouse, San Antonio, Texas

Operation of Individual Equipment Element Store and Hazardous Material Pharmacy, Fairchild Air Force Base, Washington
NPA: Envision, Inc., Wichita, Kansas

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Marker, Tube Type, Broad Tip

7520–01–424–4855
7520–01–424–4880
7520–01–424–4849
7520–01–424–4870

Meal Kits

8970–01–E59–0239C
8970–01–E59–0240C
8970–01–E59–0241C
8970–01–E59–0242C

(100% of the requirement of the Kansas National Guard)

Meal Kits

8970–01–E59–0239C
8970–01–E59–0240C
8970–01–E59–0241C
8970–01–E59–0242C
(100% of the requirement of the USPFO for Louisiana, New Orleans, Louisiana)

Meal Kits

8970–01–E59–0239C
8970–01–E59–0240C
8970–01–E59–0241C
8970–01–E59–0242C
(100% of the requirement of the Oklahoma Army National Guard)

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–27662 Filed 10–21–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletion from the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a commodity previously furnished by such agencies.

EFFECTIVE DATE: November 22, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 23, and September 3, and 10, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 FR 39968, 48345 and 49147) of proposed additions to and deletion from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Portfolio, Canvas, Imprintable
8105–00–NIB–1079

Services

Administrative Services
National Advocacy Center, 1620 Pendleton Street, Columbia, South Carolina

Furniture Rehabilitation

GSA National Furniture Center, Arlington, Virginia
(50% of the Government requirement)

Janitorial/Custodial

Naval Reserve Center, Fort Harrison, South Avenue, Helena, Montana

Mailroom Operation

U.S. Army Space and Missile Defense Command (SMDC), 106 Wynn Drive, Huntsville, Alabama

Switchboard Operation

Ellsworth Air Force Base, South Dakota

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodity.

3. The action may result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodity is hereby deleted from the Procurement List:

Case, Medical, Instrument and Supply Set

6545–00–912–9890

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–27663 Filed 10–21–99; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Antidumping Duty Review, and Revocation in Part of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances antidumping duty review, and revocation in part of antidumping duty order.

SUMMARY: On September 7, 1999, the Department of Commerce (the Department) published a notice of initiation of a changed circumstances antidumping review and preliminary results of review with intent to revoke, in part, the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. We are now revoking this order in part, with regard to two products: (1) Steel coil with an aluminum alloy lining, and (2) steel coil with a polytetrafluorethylene (PTFE)/lead-based lining, as described in the ''Scope'' section of this notice, based on the fact that domestic parties have

expressed no further interest in the relief provided by the order with respect to the importation or sale of this steel coil lined with an aluminum alloy or with a PTFE/lead-based lining, as so described.

EFFECTIVE DATE: October 22, 1999.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (1999).

FOR FURTHER INFORMATION CONTACT: Sarah Ellerman or Maureen Flannery, AD/CVD Enforcement, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4106 or (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 27, 1999, Taiho Corporation of America (Taiho America) requested that the Department revoke in part the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan with respect to steel coil with an aluminum alloy lining and steel coil with a PTFE/lead-based lining, used in the manufacture of plain sleeve bushings. Taiho America stated in its request that it had contacted the counsel for petitioners and they expressed no objection to the changed circumstances request and further stated that they had no interest in the merchandise. (*See Request for Changed Circumstances Review from Taiho Corporation of America; Certain Corrosion-Resistant Carbon Steel Flat Products from Japan*, August 27, 1999, (*Request for Changed Circumstance Review*)). The following domestic producers of corrosion-resistant steel products also filed a statement on August 27, 1999: Bethlehem Steel Corporation; Ispat Inland Steel; LTV Steel Company, Inc.; National Steel Corporation; and U.S. Steel Group, a unit of USX Corporation. In this statement, domestic producers expressed no objection to the initiation of the changed circumstances review, nor any interest in the importation or sale of steel from Japan with respect to the products described in the request submitted by Taiho America. (See Letter from Skadden, Arps, Slate, Meagher & Flom, LLP; *Certain Corrosion-Resistant Carbon Steel Flat Products from Japan: Changed Circumstances Review*, August 27, 1999.)

We preliminarily determined that the petitioner's affirmative statement of no interest constituted changed circumstances sufficient to warrant a review and partial revocation of the order. Consequently, on September 7, 1999, the Department published a notice of initiation and preliminary results of changed circumstance antidumping duty review with an intent to revoke the order, in part (64 FR 48579).

The merchandise under review is currently classifiable under subheading 7212.50.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

Scope of Changed Circumstances Review

The merchandise covered by the antidumping duty order is certain corrosion-resistant carbon steel flat products from Japan. This changed circumstances review covers: (1) Carbon steel flat products measuring 1.84 mm in thickness and 43.6 mm or 16.1 mm in width consisting of carbon steel coil (SAE 1008) clad with an aluminum alloy that is balance aluminum, 20% tin, 1% copper, 0.3% silicon, 0.15% nickel, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys; and (2) carbon steel flat products measuring 0.97 mm in thickness and 20 mm in width consisting of carbon steel coil (SAE 1008) with a two-layer lining, the first layer consisting of a copper-lead alloy powder that is balance copper, 9% to 11% tin, 9% to 11% lead, less than 1% zinc, less than 1% other materials and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 45% to 55% lead, 38% to 50% PTFE, 3% to 5% molybdenum disulfide and less than 2% other materials.[1]

Comments

Comment: In the preliminary determination we provided parties the opportunity to comment. We received one comment from domestic producers. Domestic producers claim that the Department's description of the merchandise to be excluded from the order in the substantive portion of its preliminary results differed in several important respects from the description of the merchandise in Taiho America's August 26, 1999 *Request for Changed Circumstances Review*. The domestic producers claim that their statement of no interest was based on the description of the products in Taiho America's request, and argue that the final results should specifically cover only those products as detailed in this document.

Department's Position: We agree with the domestic producers. The products for which we are revoking the antidumping duty order, which we describe above, are exactly those described in Taiho America's *Request for Changed Circumstances Review* of August 27, 1999.

Final Results of Review and Partial Revocation of the Antidumping Duty Order

The affirmative statement of no interest by the petitioner concerning the steel coil with an aluminum alloy lining and the steel coil with a PTFE/lead-based lining and the fact that no interested parties objected to or otherwise commented on our preliminary results of review, except as noted above, constitutes changed circumstances sufficient to warrant partial revocation of the order. Therefore, the Department is partially revoking the order on certain corrosion-resistant carbon steel flat products in reference to the two types of products described above, in accordance with sections 751(b) and (d) and 782(h) of the Act and 19 CFR 351.222(g)(i). This partial revocation applies to all unliquidated entries of the above-described merchandise not subject to final results of administrative review as of the date of publication in the **Federal Register** of these final results of changed circumstances review.

The Department will instruct the Customs Service (Customs) to proceed with liquidation, without regard to antidumping duties, of all unliquidated entries of steel coil with an aluminum alloy lining and steel coil with a PTFE/lead-based lining, as specifically described in the ''Scope of Review'' section above, and entered, or withdrawn from the warehouse, for consumption on or after August 1, 1997, *i.e.*, all unliquidated entries of this merchandise not subject to final results of administrative review as of the date of publication in the **Federal Register** of these final results of changed circumstances review. The Department will further instruct Customs to refund with interest any estimated duties collected with respect to unliquidated

[1] The Department described the products covered by this review incorrectly in one section of its initiation notice of September 7, 1999 (64 FR 48579). The specifications listed in this notice are the specifications of the products under review.

entries of steel coil with an aluminum alloy lining and steel coil with a PTFE/lead-based lining entered or withdrawn from the warehouse for consumption on or after the publication date of the final results of this changed circumstances review, in accordance with section 778 of the Act.

This notice also serves as a final reminder to parties subject to administrative protection orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.34(d)(1997). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This changed circumstances review, partial revocation of the antidumping duty order, and notice are in accordance with sections 751(b) and (d) and 782(h) of the Act and sections 351.216, 351.221(c)(3), and 351.222(g) of the Department's regulations.

Dated: October 14, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–27687 Filed 10–21–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Preliminary Results of Full Sunset Review: Tapered Roller Bearings From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of full sunset review: tapered roller bearings from the People's Republic of China.

SUMMARY: On April 1, 1999, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on tapered roller bearings (64 FR 15727) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of domestic and respondent interested parties, the Department determined to conduct a full (240-day) review. As a result of this review, the Department preliminarily finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Preliminary Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

EFFECTIVE DATE: October 22, 1999.

Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*'') and in CFR part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Scope

The merchandise covered by this antidumping duty order (52 FR 22667, June 15, 1987) includes tapered roller bearings (''TRBs'') and parts thereof, finished and unfinished, from the People's Republic of China (''PRC''); flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. The subject merchandise was originally classified under item numbers 680.30, 680.39, 681.10, 692.32 of the Tariff Schedules of the United States Annotated (''TSUSA''); currently, according to the U.S. Customs Service, they are classifiable under item numbers 8482.20.00.10, 8482.20.00.20, 8482.20.00.30, 8482.20.00.40, 8482.20.00.50, 8482.20.00.60, 8482.20.00.70, 8482.20.00.80, 8482.91.00.50, 8482.99.15.00, 8482.99.15.40, 8482.99.15.80, 8483.20.40.80, 8483.20.80.80, 8483.30.80.20, 8708.99.80.15 and 8708.99.80.80 of the Harmonized Tariff Schedule of the United States (''HTSUS'') (*see* June 8, 1999, Memorandum to File: HTSUS Numbers for Tapered Roller Bearings). Although the above HTSUS and TSUSA subheadings are provided for convenience and customs purposes, the written description remains dispositive.

In the ninth administrative review (62 FR 61276, 61289, November 17, 1997), the Department clarified the scope of the order when it added two additional HTSUS numbers (8708.99.90.15 and 8708.99.80.80) applicable to imports of the subject merchandise which previously had not been included in the order. In addition, the Department clarified under the HTSUS numbers that should correspond to subject merchandise previously classified under TSUSA item number 692.32 in the original antidumping order. We note that scope rulings are made on an order-wide basis.

History of the Order

In the original investigation, covering the period September 1, 1985 through August 31, 1986 (55 FR 6669, February 26, 1990), the Department determined a margin of 0.97 for Premier Bearing & Equipment, Ltd. (''Premier''); 4.69 percent for China National Machinery & Equipment Import & Export Corporation (''CMEC'') and 2.96 percent for ''all others.''

There have been ten administrative reviews for the subject antidumping duty order. A summary of these reviews follows:

Review	Period of review (''POR'')	Citation
(1)	6 Feb 1987–31 May 1988	56 FR 66 (January 2, 1991).
(2)	1 June 1988–31 May 1989	56 FR 66 (January 2, 1991).
(3)	2 May 1989–31 May 1990	61 FR 29345 (June 10, 1996).
	1 June 1989–31 May 1990	61 FR 29345 (June 10, 1996).
(4)	1 June 1990–31 May 1991	61 FR 65527 (December 13, 1996).
(5)	1 June 1991–31 May 1992	61 FR 65527 (December 13, 1996).
(6)	1 June 1992–31 May 1993	61 FR 65527 (December 13, 1996).

Review	Period of review ("POR")	Citation
(7)	1 June 1993–31 May 1994	62 FR 6189 (February 11, 1997).
(8)	1 June 1994–31 May 1995	62 FR 6173 (February 11, 1997).
(9)	1 June 1995–31 May 1996	62 FR 61276 (November 17, 1997).
(10)	1 June 1996–31 May 1997	63 FR 63842 (December 28, 1998).

Over the life of this order the Department has investigated and/or reviewed imports from 21 different producers/exporters. Although all 21 had, at some point, established the right to a separate rate, three of these companies ceased participation in the more recent reviews, and therefore, are no longer entitled to a separate rate. Additionally, the order was revoked in part with respect to subject merchandise produced by Shanghai General Bearing Company, Ltd. (62 FR 6173, February 11, 1997).

Background

On April 1, 1999, the Department initiated a sunset review of the antidumping order on TRBs from the PRC (64 FR 15727), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of domestic interested parties, The Timken Company ("Timken") and The Torrington Company ("Torrington") ("domestic interested parties") within the applicable deadline (April 16, 1998) specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. The domestic interested parties each claimed interested party status under section 771(9)(C) of the Act as a U.S. producer of a domestic like product. On May 3, 1999, Zheijiang Machinery Import & Export Corporation ("Zheijiang Machinery"); Liaoning Mec Group, Ltd. ("Liaoning"); Luoyang Bearing Corporation (Group) ("Luoyang"); Zheijiang Changshan Changhe Bearing Co., Ltd. ("ZCCBC"); Zheijiang Wanxiang Group ("Wanxiang"); China National Machinery Import & Export Corporation ("CMC"); Xibei Bearing Group Import & Export Co., Ltd. ("Xibei"); and Xiangyiang Bearing Factory ("Xiangyiang"); and the China TRB Sunset Coalition ("China Coalition") (collectively "respondent interested parties") notified the Department that they intended to participate in this sunset review. CMC noted that it is a different and distinct company from CMEC.

We received complete substantive responses from the domestic and respondent interested parties on May 3, 1999. In response to a request from respondent interested parties, the Department, pursuant to 19 CFR 351.302, granted an extension of the deadline for filing substantive responses, and, on May 7, 1999, the respondent interested parties submitted supplemental information to complete their substantive response.

Timken claims that it was a petitioner in the original investigation and a participant in the ten administrative reviews. Torrington, however, did not participate in the original investigation or any administrative review. The respondent interested parties claimed interested party status under section 771(9)(B) of the Act, as foreign producers/exporters of the subject merchandise. As an association of foreign producers/exporters of subject merchandise, the China Coalition claimed interested party status under section 771(9)(A) of the Act. None of the above respondent interested parties participated in the original investigation. However, Zheijiang and CMC participated in the seventh through tenth reviews; Liaoning and Luoyang participated in the third through tenth reviews; and Wanxiang participated in the ninth and tenth reviews. ZCCBC is currently the subject of a new shipper review.

On May 12, 1999, we received rebuttal comments from the domestic and respondent interested parties. On May 24, 1999, the Department determined to conduct an expedited sunset review of this order on the basis that respondent interested parties accounted for significantly less than 50 percent of the value of imports over the past five years.[1] On June 10, 1999, within the 70-day deadline specified in 19 CFR 351.309(e)(ii), respondent interested parties submitted comments on the Department's determination to conduct an expedited sunset review. On July 20, 1999, we notified the International Trade Commission that we had reconsidered our determination of adequacy and, on the basis of complete substantive responses from domestic and respondent interested parties to the notice of initiation, and pursuant to 19 CFR 351.218(e)(1)(ii)(A), the Department determined to conduct a full (240-day) sunset review of this order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). Accordingly, on July 20, 1999, the Department determined that the sunset review of the antidumping duty investigation on TRBs from the PRC is extraordinarily complicated, and extended the time limit for completion of the preliminary results of this review until not later than October 18, 1999, in accordance with section 751(c)(5)(B) of the Act.[2]

Determination

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's preliminary determination concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, the domestic and respondent interested parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action, H.R. Doc. No. 103–316, vol. 1 (1994) ("the SAA"), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the

[1] *See* May 24, 1999, Memorandum for Jeffrey A. May, Re: Sunset Review of Tapered Roller Bearings from the People's Republic of China: Adequacy of Respondent Interested Party Response to the Notice of Initiation.

[2] *See Tapered Roller Bearings from the People's Republic of China: Extension of Time Limit for Preliminary Results of Five-Year Review* (July 20, 1999).

Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

Domestic interested parties argue that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. With respect to whether dumping continued at any level above *de minimis* after the issuance of the order, domestic interested parties assert in their substantive response that TRB producers from the PRC have dumped subject merchandise into the United States prior to 1987 (*see* March 3, 1999, Substantive Response of domestic interested parties at 7). Further, the domestic interested parties assert that, throughout the history of the order, bearings producers in China have had to sell at less than fair value in order to export to the United States. *Id.* For example, the rate of dumping found for ''all others'' increased from 8.83 percent in the 1990/91 review, to 33.18 percent in the most recent 1996/97 review.

With respect to whether dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly, the domestic interested parties assert that the margins of dumping for PRC imports have increased over the life of the order, along with the volume of TRB imports. Further, the domestic interested parties assert that Chinese producers have continued to increase their exports of subject merchandise—despite increasing margins—because of incentives unique to the PRC market. Their examples include government incentives such as preferential loan and tax policies; triangular debt in the bearings industry, in which government policies requiring full employment with limited money supply result in a surge of exports to attract hard currency; and PRC government reform of state-owned enterprises (''SOEs''), in which their sale or liquidation results in excess capacity that can be devoted to production for export. *Id.* at 8–9.

Respondent interested parties argue that revocation of the antidumping duty order on TRBs from China will not result in a continuation or recurrence of dumping. With respect to whether dumping continued at any level above de minimis after the issuance of the order, the respondent interested parties assert that the weighted-average margins of dumping have declined significantly in recent years and that the margins of dumping for the 1997/98 review are likely to decline to a de minimis level (*see* May 3, 1999 Substantive Response of respondent interested parties at 21).

With respect to whether dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly, the respondent interested parties assert that, imports of subject merchandise from China are dramatically higher during the period following the issuance of the order. *Id* at 20. Specifically, the respondent interested parties assert that annual imports of TRBs from China during the period from 1994 to 1998 averaged over twenty times the level in 1985, the year preceding the issuance of the order. *Id.* Moreover, they note that China's import market share is substantially higher during this more recent period than in 1985. *Id.* at 21.

In their rebuttal comments of May 12, 1999, domestic interested parties assert that the respondent interested parties' submission should not be deemed adequate because the Chinese government has not indicated its willingness to participate in the sunset review (*see* May 12, 1999 Rebuttal Comments of domestic interested parties at 5). The domestic interested parties argue that, absent government participation, the Department will not obtain the kind of data that would warrant a full review. Furthermore, domestic interested parties reassert that, in every review in every year since the order was put in place, the Department has found dumping. *Id.* at 7. As dumping has not been eliminated, and significant margins continued to be found, dumping is therefore likely to continue or recur.

In their May 12, 1999 rebuttal comments, respondent interested parties assert that the domestic interested parties' distort the effects of revocation and possible margins by using the PRC-wide review rates to total PRC imports, when a substantial portion of these imports are from Chinese companies that have received separate rates in past administrative reviews (*see* May 12, 1999 Rebuttal comments of respondent interested parties at 2).

With respect to the issue of government incentive programs raised by domestic interested parties, respondent interested parties argue that Chinese TRB producers and exporters do not receive benefits from any export incentive programs. They assert that the only benefit received by TRB producers and exporters is reimbursement of, and/or exemption from, VAT taxation for exporting. *Id.* at 3. However, the refunding of VAT is not deemed a subsidy under either U.S. law or under the WTO Agreement on Subsidies and Countervailing Measures. Moreover, respondent interested parties argue that market economy countervailing duty principles should not be applied to non-market economies in the evaluation of fair market value. *Id* at 4.

With respect to the issue of triangular debt raised by domestic interested parties, respondent interested parties assert that triangular debt (*see* May 3, 1999 Substantive Response of domestic interested parties) has no bearing on the Chinese TRB companies, which, as the Department has repeatedly recognized, are not state-owned (*see* May 12, 1999 Rebuttal Comments of respondent interested parties at 4).

Respondent interested parties dispute the domestic interested parties' assertion that there is reduced demand for TRBs in the PRC, arguing that, on the contrary, Chinese government policies and SOE reform are increasing the domestic demand for TRBs. *Id.* at 6. Moreover, they dispute the argument of the domestic interested parties that Chinese TRB producers maintain inventories of subject merchandise, which they are stockpiling for U.S. export. *Id.* at 7.

As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue to dump despite the discipline of an order in place, the Department may reasonably infer that dumping would continue were the discipline to be removed. In this case, the Department finds that, although the margins of four companies decreased below *de minimis* in the ninth and tenth reviews, dumping by other producers/exporters nonetheless continued since the issuance of an antidumping order. In addition, the PRC-wide rate has increased steadily every year since the third review, especially between the sixth and seventh reviews. Given that dumping has continued over the life of the order, the Department preliminarily determines that dumping is likely to continue if the order were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination of the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the ''all others'' rate from the investigation (*see* section II.B.1 of the *Sunset Policy Bulletin*). Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations (*see* sections II.B.2 and 3 of the *Sunset Policy Bulletin*).

As noted above, the Department published a rate of 0.97 percent for Premier, 4.69 percent for CMEC and, 2.96 for ''all others'' in its final determination of sale at less than fair value (55 FR 6669, February 26, 1989). In addition, the Department has conducted ten administrative reviews of this order. Further, we note that, to date, the Department has not issued any duty absorption findings in this case.

The domestic interested parties assert that the Department should select the highest calculated rate that corresponds to the review period in which the companies—Wanfangdian, Jilin, Lianoning and Guizhou—had their highest import volumes. The domestic interested parties argue that, for these companies, the increases in the dumping margin correspond to increases in U.S. imports, indicating that these companies increased dumping in order to expand their market share. Furthermore, domestic interested parties argue that, because imports of Chinese TRBs and PRC-wide dumping margins have increased almost every year since the issuance of the order, the Department should determine that the most recent PRC-wide rate of 33.18 percent is the rate likely to prevail for imports from all producers that do not currently have a separate rate (*see* May 3, 1999 Substantive Response of domestic interested parties at 13). Finally, the domestic interested parties argue that companies that lost their status as independent companies should be assigned the most recent PRC-wide rate.

Respondent interested parties argue that, in view of the dramatically increased level of imports from China from the period before the issuance of the antidumping order, and the declining weighted-average dumping margins in the most recent two reviews, the Department should provide to the Commission the weight average of the most recent rates of 3.20 percent, 0.02 percent and 0.03 percent for Luoyang, Liaoning, and CMC, respectively (*i.e.*, rates from the 1996/97 administrative review) (*see* May 3, 1999 Substantive Response of respondent interested parties at 22), as the margin likely to prevail if the order were revoked.

In their May 12, 1999, rebuttal, the domestic interested parties reassert that as Chinese TRB imports have increased during the life of the subject order, margins have also increased, showing that producers/importers from the PRC have had to increase dumping in order to increase sales volume (*see* May 12, 1999 Rebuttal of domestic interested parties at 7). In addition, the domestic interested parties disagree with the respondent interested parties' argument that the Department should calculate the weight average of the margins of Luoyang, Liaoning, and China National in the 1996/97 review, as the margin likely to prevail if the order were revoked, because, allegedly, these respondents failed to identify extraordinary circumstances that would warrant such revised rates. *Id.* at 9.

With respect to the domestic interested parties' argument that the Department use the historical PRC-wide rate, respondent interested parties assert that this argument ignores the fact that over 23 different companies were not participants in the original investigation (*see* May 12, 1999 Rebuttal of respondent interested parties at 10). Moreover, in one or more annual reviews, nearly all companies received separate rates and lower margins than the determined PRC-wide rate. *Id.*

With respect to the issue of assignment of the PRC-wide rate to companies previously eligible for separate rate, respondent interested parties assert that certain companies dropped out of the review process because they decided to leave the U.S. market and for no other reason. *Id* at 7.

As stated above, the Department normally will provide to the Commission the margin that was determined in the original investigation. The SAA at 889–90 and the House Report at 63 state that declining (or no) margins accompanied by steady or increasing imports may indicate that foreign companies do not have to dump to maintain market share in the United States, and that dumping is less likely to continue or recur were the order to be revoked. Therefore, section II.B.2 of the *Sunset Policy Bulletin* states that in response to argument from an interested party, the Department may provide to the Commission a more recently calculated margin for a particular company where, for that particular company, dumping margins declined or dumping was eliminated after the issuance of the order and import volumes remained steady or increased. Additionally, if a company chooses to increase dumping in order to increase or maintain market share, the Department may provide the Commission with a more recently calculated margin for that company.

Based on our review of information submitted by the interested parties, the U.S. Census Bureau IM146 reports, and data from our original investigation and subsequent administrative reviews, the Department preliminarily determines that:

(1) With respect to Wafangdian, Jilin and Liaoning, the Department agrees with the domestic interested parties that company-specific export volumes and company-specific dumping margins peaked concurrently, during the 1994/95 period of review. Additionally, company-specific exports and the dumping margin for Guizhou Machinery peaked concurrently during the 1995/96 period of review. This trend shows that these companies may be willing to increase dumping in order to increase or maintain market share. Therefore, the Department, in accordance with section II.B.2 of the *Sunset Policy Bulletin*, preliminarily intends to report to the Commission company-specific rates from the periods of review during which their imports increased: 29.40 percent for Wafangdian, from the 1994/95 review period; 29.40 percent for Jilin, from the 1994/95 and 1995/96 periods of review; 9.72 percent for Lioaning, from the 1994/95 period of review, and 21.79 percent for Guizhou Machinery, from the 1995/96 period of review.

(2) At some time over the life of the order, CMEC, Guizhou Automotive and Tianshui Hailin were subject to separate rates, but were assigned the PRC-wide rate when they did not participate in subsequent reviews. The Department agrees with the domestic interested parties' argument that it is not appropriate to assign a rate to these companies based on a status they no longer enjoy. Therefore, the Department preliminarily intends to report to the Commission the 1995/96 review PRC-wide rate of 29.40 percent for CMEC, Guizhou Automotive and Tianshui Hailin.

(3) With respect to CMC and Luoyang, the Department agrees with respondent interested parties that as company-specific exports from these companies increased from the period prior to issuance of the order, their company-specific weighted-average dumping

margins have declined in the two most recent reviews. The Department finds the same trend for Zheijiang Machinery and Waxiang, which shows that each of these exporters are likely to continue dumping at the lower rates found in more recent reviews. Thus, the Department, in accordance with section II.B.2 of the *Sunset Policy Bulletin*, preliminarily intends to report to the Commission the company-specific margin of 0.03 percent for CMC, 3.20 percent for Luoyang, and 0.11 percent for Zheijiang Machinery, each from the 1996/97 period of review; and 0.03 percent for Waxiang from the 1995/96 review.

(4) Because three respondent interested parties—Xiangyiang, Xibei and ZCCBC (a participant in the current new shipper review)—have never been determined eligible for a company-specific rate, the Department preliminarily intends to assign the PRC-wide rate of 29.40 percent to these companies.

(5) The margins for Premier, a company subject to the original investigation, have generally increased throughout the history of the order. Premier's original margin of 0.97 percent peaked at 25.56 percent in the 1993/94 review, and then decreased to 7.22 percent in the most recent 1996/97 review. Absent comments or information regarding the margin and import volumes for Premier from domestic and respondent interested parties, the Department, in accordance with section II.B.2 of the *Sunset Policy Bulletin*, preliminarily intends to report to the Commission a more recent rate of 5.43 percent for Premier. This rate is from the 1995/96 period of review, in which the overall volume of imports peaked and then began to decline.

(6) With respect to the PRC ''all others'' rate, the Department agrees with domestic interested parties' argument that, as import volumes generally increased, with the highest volumes in the years with the highest margins, companies have increased dumping in order to maintain or increase market share. We note that the total volume of imports less imports of those companies with separate rates increased from fiscal years 1994 through 1996, then declined in fiscal years 1997 through 1998. During this five-year period, the PRC rate increased approximately 30 percent, reaching a peak of 33.18 percent in FY 1997. Following this margin increase, imports declined approximately 60 percent. Because overall imports increased through 1996 and then began to decline, the Department preliminarily intends to report to the Commission a rate of 29.40 percent for ''all others'', in accordance with section II.B.2 of the *Sunset Policy Bulletin*. This is the PRC-wide rate from the 1995/96 administrative review.

Preliminary Results of Review

As a result of this review, the Department preliminarily finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the margins listed below:

Producer/exporter	Margin (percent)
China National Machinery Import & Export Corp.(''CMC'')	0.03
Zheijiang Wanxiang Group	0.03
Zheijiang Machinery Import & Export Corp	0.11
Luoyang	3.20
Premier	5.43
Liaoning	9.72
Guizhou Machinery	21.79
Wafangdian	29.40
Jilin	29.40
China National Machinery Import & Export Corp.(''CMEC'')	29.40
Guizhou Automotive	29.40
Tianshui Hailin	29.40
Xiangyiang	29.40
Xibei	29.40
Zheijiang Changshan Changhe Bearing Co. (''ZCCBC'')	29.40
All Others	29.40

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held on December 14, 1999, in accordance with 19 CFR 351.310(d). Interested parties may submit case briefs no later than December 7, 1999, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than December 13, 1999. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such *Policy Bulletin*.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 18, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–27686 Filed 10–21–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–401–401]

Certain Carbon Steel Products From Sweden: Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On July 12, 1999, the Department of Commerce (''the Department'') published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on certain carbon steel products (''Certain Steel Products'') from Sweden for the period January 1, 1997 through December 31, 1997. The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (''the Act''). For information on the net subsidy for each reviewed company, and for all non-reviewed companies, please see the *Final Results of Review* section of this notice. We will instruct the U.S. Customs Service (''Customs'') to assess countervailing duties as detailed in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: October 22, 1999.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl or Gayle Longest, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 CFR 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers SSAB Svenskt Stal AB (''SSAB''). This review also covers the period January 1, 1997 through December 31, 1997 and seven programs.

We published the preliminary results on July 12, 1999 (64 FR 37507). We invited interested parties to comment on the preliminary results. We received no comments from any of the parties.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to

the provisions of the Act as amended by the Uruguay Round Agreements Act (''URAA'') effective January 1, 1995. The Department is conducting this administrative review in accordance with section 751(a) of the Act. All citations to the Department's regulations reference 19 CFR Part 351 (April 1998) unless otherwise indicated. Because the request for this administrative review was filed before January 1, 1999, the Department's substantive countervailing duty regulations, which were published in the **Federal Register** on November 25, 1998 (63 FR 65348), do not govern this review.

Scope of the Review

Imports covered by this review are shipments of certain carbon steel products from Sweden. These products include cold-rolled carbon steel, flat-rolled products, whether or not corrugated, or crimped: whether or not pickled, not cut, not pressed and not stamped to non-rectangular shape; not coated or pleated with metal and not clad; over 12 inches in width and of any thickness; whether or not in coils. During the review period, such merchandise was classifiable under the *Harmonized Tariff Schedule* (''HTS'') item numbers 7209.11.0000, 7209.12.0000, 7209.13.0000, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7211.30.5000, 7211.41.7000 and 7211.49.5000. The written description remains dispositive.

Subsidies Value Information

Privatization and Sale of Assets to Other Companies

SSAB is the only Swedish company that produces and exports the subject merchandise. SSAB has sold several productive units and the company was partially privatized in 1987 and in 1989. In 1994, SSAB was completely privatized by the Government of Sweden. Under the Department's current practice, to the extent that a portion of the sales price paid for a privatized company can be reasonably attributed to prior subsidies, that portion of those subsidies will be extinguished. Accordingly, in these final results, the Department continues to apply its repayment methodology in the calculation of SSAB's net subsidy rate. No comments were filed regarding this issue.

To calculate the benefit provided to SSAB in the POR, where appropriate, we multiplied the benefit calculated for 1997, adjusted for sales of productive units, by the ratio representing the amount of subsidies remaining with SSAB after privatization. We then divided the results by the company's total sales in 1997.

Allocation Methodology

In the current review, there are no new subsidies. All of the non-recurring grants under review were provided prior to the POR; allocation periods for these grants were established during prior segments of this proceeding. Therefore, for purposes of these final results, the Department is using the original allocation period assigned to each grant. *See Certain Carbon Steel Products from Sweden; Final Results of Administrative Review,* 66 FR 16549–16550 (April 7, 1997) (''1994 Final Results'').

Analysis of Programs

There were no comments submitted to the Department with respect to our preliminary results of review; therefore, based upon the responses to our questionnaire we determine the following:

I. Programs Conferring Subsidies

A. Programs Previously Determined to Confer Subsidies

1. Structural Loans

In the preliminary results we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidy for this program is 0.12 percent *ad valorem,* which remains unchanged from the preliminary results.

2. Forgiven Reconstruction Loans

In the preliminary results we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidy for this program is 0.59 percent *ad valorem,* which remains unchanged from the preliminary results.

II. Other Programs Examined

A. Research and Development Loans and Grants

In the preliminary results, we found that the Swedish National Board for Industrial & Technical Development (''NUTEK'') program provides loans and grants for R & D purposes to Swedish industries. Under this program benefits from outstanding loans during the POR would result in a rate of less than 0.005 percent *ad valorem* which would have no impact on the countervailing duty rate. The grants provided did not exceed 0.5 percent of SSAB's total sales for the year in which they were received, and were expensed during the year of receipt *See Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from Italy* 64 FR 30624, 30631 (June 8, 1999). Therefore, it is not necessary to determine if the loans and the grants under NUTEK are specific. Our review of the record has not led us to change any findings or calculations. Therefore, our determination for these programs remains unchanged.

Final Results of Review

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated an individual subsidy rate for the producer/exporter subject to this administrative review. For the period January 1, 1997 through December 31, 1997, we determine the net subsidy for SSAB to be 0.72 percent *ad valorem.*

We will instruct Customs to assess countervailing duties on entries of subject merchandise from SSAB during the POR at 0.72 percent *ad valorem.* The Department will also instruct Customs to collect a cash deposit of estimated countervailing duties of 0.72 percent of the f.o.b. invoice price on all shipments of the subject merchandise from SSAB entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company cannot change, except pursuant to a request and subsequent review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States,* 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States,* 822 F.Supp. 766 (CIT 1993). Therefore, the cash deposit rates for all companies except the firm

covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See, Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review,* 62 FR 16549 (April 7, 1997). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1997 through December 31, 1997, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. This administrative review and notice are issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: October 18, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–27685 Filed 10–21–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–834]

Final Negative Countervailing Duty Determination; Live Cattle From Canada

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

EFFECTIVE DATE: October 22, 1999.

FOR FURTHER INFORMATION CONTACT: Zak Smith, Stephanie Hoffman, James Breeden, or Melani Miller, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0189, 482–4198, 482–1174, or 482–0116, respectively.

Final Determination

The Department of Commerce determines that countervailable subsidies are not being provided to producers or exporters of live cattle in Canada.

Petitioner

The petition in this investigation was filed on November 12, 1998, by the Ranchers-Cattlemen Action Legal Foundation (R-Calf, referred to hereafter as ''the petitioner'').

Case History

Since the publication of the preliminary determination in the **Federal Register** on May 11, 1999 (64 FR 25278) (''*Preliminary Determination*''), the following events have occurred:

We conducted verification in Canada of the questionnaire responses from the Government of Canada (''GOC''), Government of Alberta (''GOA''), Government of Manitoba (''GOM''), Government of Ontario (''GOO'') and Government of Saskatchewan (''GOS'') from June 16 through June 28 and August 5 through August 13, 1999. We aligned the final determination in this investigation with the final determination in the companion antidumping investigation (*see Countervailing Duty Investigation of Live Cattle From Canada; Notice of Alignment With Final Antidumping Duty Determination,* 64 FR 35127 (June 30, 1999)) and we postponed the final determination of this investigation until October 4, 1999 (*see Notice of Postponement of Final Antidumping Determination: Live Cattle from Canada,* 64 FR 40351 (July 26, 1999)). On October 4, 1999, the deadline for this final determination was set for October 12, 1999. See Memorandum to Richard W. Moreland from Valerie Ellis, ''Clarification and Correction of Extension of Final Determination in the Antidumping Investigation of Live Cattle from Canada.'' The petitioner and the respondents filed case briefs on September 3 and we received rebuttal briefs from the petitioner and the respondents on September 10, 1999. In addition, we invited parties to submit factual information and/or argumentation regarding the role and amount of compensation received by cattlemen leasing public grazing lands in Alberta from energy companies leasing oil and gas rights on these lands. We received submissions from both the petitioner and the GOA on September 17, 1999, and rebuttal comments from each party on September 22, 1999.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''URAA'') effective January 1, 1995 (''the Act''). In addition, all citations to the Department of Commerce's (''the Department's'') regulations are to the current regulations codified at 19 CFR Part 351 (April 1998). Although Subpart E of 19 CFR Part 351, published on November 25, 1998 (63 FR 65348)(''*New CVD Regulations*'') does not apply to this investigation, Subpart E represents the Department's interpretation of the requirements of the Act. *See* 19 CFR 351.702(b).

Scope of Investigation

The scope of this investigation covers live cattle from Canada. For purposes of this investigation, the product covered is all live cattle except imports of (1) bison, (2) dairy cows for the production of milk for human consumption, and (3) purebred cattle and other cattle specially imported for breeding purposes.

The merchandise subject to this investigation is classifiable as statistical reporting numbers under 0102.90.40 of the Harmonized Tariff Schedule of the United States (''HTSUS''), with the exception of 0102.90.40.10, 0102.90.40.72 and 0102.90.40.74. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Injury Test

Because Canada is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the

International Trade Commission (''ITC'') is required to determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry. *See* section 701(a)(2) of the Act. On January 25, 1999, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from Canada of the subject merchandise (*see* 64 FR 3716).

Period of Investigation

The period for which we are measuring subsidies (the ''POI'') is the GOC's fiscal year, April 1, 1997 through March 31, 1998.

Subsidies Valuation Information

Allocation Period

We have used three years as the allocation period in this investigation. Based on information provided by the petitioner, three years is the average useful life (''AUL'') of productive assets for the Canadian cattle industry. Parties are not contesting this AUL.

Subsidy Rate Calculation

Due to the extremely large number of cattle producers in Canada, we have collected subsidy information on an industry-wide or ''aggregate'' basis (*i.e.*, the total amount of benefits provided under a particular program). Moreover, we have limited our investigation to the four largest cattle producing provinces in Canada. Therefore, unless otherwise noted, for each program found to be countervailable, we have calculated the *ad valorem* subsidy rate by dividing the total amount of the benefit attributed to cattle producers in the four relevant provinces during the POI by the total sales of all cattle in the same four provinces.

Benchmarks for Loans

In our *Preliminary Determination*, we used a previously verified benchmark interest rate charged by Canadian commercial banks on loans made to the farming sector for purposes of calculating the countervailable benefits from the provincial and federal loan guarantee programs and nonrecurring grants. *See Live Swine From Canada; Preliminary Results of Countervailing Duty Administrative Review*, 63 FR 23723, 23726 (April 30, 1998) (''*Live Swine From Canada 1998*'').

For this final determination, we have revised the benchmark rates used to evaluate the provincial loan guarantee programs. At verification, we met with private bank officials in Alberta and Saskatchewan who explained that the cattle associations participating in the loan guarantee programs receive competitive financing because the association loans are large-scale, short-term lending arrangements that provide lenders substantial security against default due to the highly structured nature of the associations. Furthermore, the private bank officials indicated that commercial lending rates obtained by the cattle associations differ among the provinces due to local economic conditions. *See* Memorandum to Susan Kuhbach from Zak Smith and James Breeden, ''Verification Report for Private Commercial Banks in the *Countervailing Duty Investigation of Live Cattle from Canada*,'' dated August 27, 1999 (''Private Commercial Bank Verification Report''). Because we believe it is reasonable to assume that the cattle associations will borrow in their home province, province-specific benchmarks offer the best measure of a comparable commercial loan that the associations could actually obtain in the market. *See* section 771(E)(ii) of the Act.

Based on our discussions with the private bank officials, we calculated a benchmark rate for the loan guarantee programs of prime plus .375 percent and prime plus one percent for Alberta and Saskatchewan, respectively. With respect to Manitoba and Ontario, we did not collect any province-specific information regarding lending rates to cattle associations and, therefore, we have averaged the benchmark rates computed for Alberta and Saskatchewan to calculate the loan guarantee benchmark rate for these provinces.

For the remaining loan programs investigated in this proceeding, we have continued to use the benchmark rate of prime plus 1.5 percent from *Live Swine from Canada 1998* because the recipients of these loans are individual livestock producers and, therefore, the benchmark rate applicable to the cattle associations does not represent a comparable commercial loan. As discussed in *Live Swine from Canada 1998*, the Department determined that prime plus 1.5 percent represents the national average of the predominant lending rates on comparable long-term, prime-based loans made to individual livestock producers in Canada. Accordingly, we have applied this benchmark rate for purposes of measuring the benefit on loans made to individual cattle producers.

We also note that we have continued to use the figures published by the Bank of Canada to calculate the average prime rate during the POI.

Loan Guarantee Programs

For certain loan guarantee programs that we have found to be countervailable, the respondents were unable to provide the specific loan information required to perform a precise calculation of the countervailable benefit attributable to cattle producers during the POI. They were unable to provide the data because of the nature of the underlying loan instrument (*i.e.*, lines of credit which had no predetermined time frame for the disbursal of principal or set repayment schedule), the extremely large number of loans provided, and the large number of transactions (withdrawals and payments) conducted pursuant to those loans. Therefore, for these programs, we have estimated the countervailable benefit by calculating the difference between the interest actually paid in the POI and the interest that would have been paid on a commercial loan absent a guarantee. *See Extruded Rubber Thread From Malaysia: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 57 FR 38472 (August 25, 1992). This approach does not yield a precise measure of the benefit because the loan instruments being examined are effectively lines of credit with balances and interest rates varying from month-to-month. Nonetheless, we believe this methodology is reasonable under the circumstances presented by this investigation.

Also, the respondents reported various fees that borrowers would have paid in connection with the guaranteed loans. However, the information they presented with respect to fees payable on commercial loans was unclear. So, to avoid a comparison of nominal benchmark rates with effective interest rates on the government-guaranteed loans, we have generally not included the fees in calculating the amounts paid under the government-guaranteed loans. Consequently, we are comparing nominal rates to nominal rates. The one exception to this is the fee specifically paid to FIMCLA for the guarantee, which is an allowable offset under section 771(6)(A) of the Act.

I. Programs Determined To Be Countervailable

Loan and Loan Guarantee Programs

A. Farm Improvement and Marketing Cooperative Loans Act (''FIMCLA'')

Under FIMCLA, the GOC provides guarantees on loans extended by private commercial banks and other lending institutions to farmers across Canada.

Created in 1987, the purpose of this program is to increase the availability of loans for the improvement and development of farms, and the marketing, processing and distribution of farm products by cooperative associations. Pursuant to FIMCLA, any individual engaged in farming in Canada and any farmer-owned cooperative are eligible to receive loan guarantees covering 95 percent of the debt outstanding for projects that are related to farm improvement or increased farm production. The maximum amount of money that an individual can borrow under this program is C$250,000. For marketing cooperatives, the maximum amount is C$3,000,000. The GOC reported that beef and hog farmers, which are categorized as one group by the FIMCLA administration, received approximately 18 to 27 percent of all guarantees between 1994 and 1998, while other users such as poultry, fruit and vegetables, and dairy producers received less than ten percent of the guarantees.

A loan guarantee is a financial contribution, as described in section 771(5)(D)(i) of the Act, which provides a benefit to the recipients equal to the difference between the amount the recipients of the guarantee pay on the guaranteed loans and the amount the recipients would pay for a comparable commercial loan absent the guarantee, after adjusting for guarantee fees. Because the beef and pork industries received a disproportionate share of benefits between 1994 and 1998, we determine that the program is specific under section 771(5A)(D)(iii) of the Act. Therefore, we determine that these loan guarantees are countervailable subsidies to the extent that they lower the cost of borrowing, within the meaning of section 771(5) of the Act.

Because of the large number of guarantees granted under this program, we agreed to use a sample generated by the GOC of loans guaranteed under the program for beef producers throughout Canada. At verification, we examined the GOC's sampling methodology and have determined that this sample yields an accurate reflection of all loans provided to beef producers that receive FIMCLA guarantees.

To calculate the benefit conferred by this program, we used our long-term fixed-rate or variable-rate loan methodology (depending on the terms of the reported loans) to compute the total benefit on the sampled loans. We then calculated the benefit per dollar loaned to beef producers. This ratio was multiplied by the total value of guaranteed loans outstanding to beef and hog producers in the POI to arrive at the total benefit. We then divided the total benefit attributable to the POI by Canada's total sales of live cattle and hogs during the POI. On this basis, we determine the total subsidy from this program to be 0.04 percent *ad valorem*.

B. Alberta Feeder Associations Guarantee Program

The Alberta Feeder Associations Guarantee Act was established in 1938 to encourage banks to lend to cattle producers. The program is administered by the Alberta Department of Agriculture, Food and Rural Development. Under this program, up to 15 percent of the principal amount of commercial loans taken out by feeder associations for the acquisition of cattle is guaranteed. Eligibility for the guarantees is limited to feeder associations located in Alberta. Sixty-two associations received guarantees on loans which were outstanding during the POI.

A loan guarantee is a financial contribution, as described in section 771(5)(D)(i) of the Act, which provides a benefit to the recipients equal to the difference between the amount the recipients of the guarantee pay on the guaranteed loans and the amount the recipients would pay for a comparable commercial loan absent the guarantee, after adjusting for guarantee fees. Because eligibility is limited to feeder associations, we determine that the program is specific under section 771(5A)(D)(i) of the Act. Therefore, we determine that these loan guarantees are countervailable subsidies to the extent that they lower the cost of borrowing, within the meaning of section 771(5) of the Act.

To calculate the benefit conferred by the loan guarantees, we applied our short-term loan methodology and compared the amount of interest actually paid during the POI by the associations to the amount that would have been paid at the benchmark rate, as described in the *Subsidies Valuation Information* section, above. We then divided the associations' interest savings by the investigated provinces' total sales of live cattle during the POI. On this basis, we determine the total subsidy from this program to be 0.01 percent *ad valorem*.

C. Manitoba Cattle Feeder Associations Loan Guarantee Program

The Manitoba Cattle Feeder Associations Loan Guarantee Program was established in 1991 to assist in the diversification of Manitoba farm operations. The program is currently administered by the Manitoba Agricultural Credit Corporation (''MACC''). The provincial government, through MACC, guarantees 25 percent of the principal amount of loans for the acquisition of livestock by feeder associations. Eligibility for the guarantees is limited to feeder associations located in Manitoba. Associations must be incorporated under the Cooperatives Act of Manitoba, have a minimum of fifteen members, an elected board of directors, and a registered brand for use on association cattle. Ten associations received guarantees on loans which were outstanding during the POI.

A loan guarantee is a financial contribution, as described in section 771(5)(D)(i) of the Act, which provides a benefit to the recipients equal to the difference between the amount the recipients of the guarantee pay on the guaranteed loans and the amount the recipients would pay for a comparable commercial loan absent the guarantee, after adjusting for guarantee fees. Because eligibility is limited to feeder associations, we determine that the program is specific under section 771(5A)(D)(i) of the Act. Therefore, we determine that these loan guarantees are countervailable subsidies, to the extent that they lower the cost of borrowing, within the meaning of section 771(5) of the Act.

To calculate the benefit conferred by the loan guarantees, we applied our short-term loan methodology and compared the amount of interest actually paid during the POI by the associations to the amount that would have been paid at the benchmark rate, as described in the *Subsidies Valuation Information* section, above. We then divided the associations' interest savings by the investigated provinces' total sales of live cattle during the POI. On this basis, we determine the total subsidy from this program to be less than 0.01 percent *ad valorem*.

D. Ontario Feeder Cattle Loan Guarantee Program

The Ontario Feeder Cattle Loan Program was established in 1990 to help secure financing for cattle producers. The program is administered by the Ontario Ministry of Agriculture, Food and Rural Affairs (''OMAFRA''). OMAFRA provides a start-up grant of $10,000 to new feeder associations and government guarantees covering 25 percent of the amount borrowed by associations for the purchase and sale of cattle. Eligibility for the guarantees is limited to feeder associations which have at least twenty individuals who own or rent land in Ontario and are not members of other feeder associations.

Eighteen associations received guarantees on loans which were outstanding during the POI.

Loan guarantees and grants are financial contributions, as described in section 771(5)(D)(i) of the Act. Loan guarantees provide a benefit to the recipients equal to the difference between the amount the recipients of the guarantee pay on the guaranteed loans and the amount the recipients would pay for a comparable commercial loan absent the guarantee, after adjusting for guarantee fees. In the case of grants, the benefit to recipients is the amount of the grant. Because eligibility for the loan guarantees and grants under this program is limited to feeder associations, we determine that the program is specific under section 771(5A)(D)(i) of the Act. Therefore, we determine that these loan guarantees are countervailable subsidies, to the extent that they lower the cost of borrowing, within the meaning of section 771(5) of the Act. Also, the grants are countervailable subsidies within the meaning of section 771(5) of the Act.

To calculate the benefit conferred by the loan guarantees, we applied our short-term loan methodology and compared the amount of interest actually paid during the POI by the associations to the amount that would have been paid at the benchmark rate, as described in the *Subsidies Valuation Information* section, above. We then divided the associations' interest savings by the investigated provinces' total sales during the POI. On this basis, we determine the total subsidy from this program to be 0.01 percent *ad valorem*.

Additionally, we determine that the grants provided under this program are non-recurring because the recipients could not expect to receive them on an ongoing basis. However, because the grant amounts were below 0.50 percent of the investigated provinces' sales in the year of receipt in each of the relevant years, we expensed the benefit from the grants. For the POI, we divided the grants received during the POI by the investigated provinces' total sales of live cattle during the POI. On this basis we determine the countervailable subsidy to be less than 0.01 percent *ad valorem*.

To calculate the total benefit to cattle producers under this program, we summed the benefit calculated for the loan guarantees and grants. On this basis, we determine the total subsidy from this program to be 0.01 percent *ad valorem*.

E. Saskatchewan Feeder Associations Loan Guarantee Program

The Saskatchewan Feeder Associations Loan Guarantee Program was established in 1984 to facilitate the establishment of cattle feeder associations in order to promote cattle feeding in Saskatchewan. The program is administered by the Livestock and Veterinary Operations Branch of the Saskatchewan Agriculture and Food Department. This agency provides a government guarantee for 25 percent of the principal amount on loans to feeder associations for the purchase of feeder heifers and steers. Eligibility for the guarantees is limited to feeder associations with at least twenty members over the age of eighteen, who are not active in other feeder associations. One hundred and sixteen associations received guarantees on loans which were outstanding during the POI.

A loan guarantee is a financial contribution, as described in section 771(5)(D)(i) of the Act, which provides a benefit to the recipients equal to the difference between the amount the recipients of the guarantee pay on the guaranteed loans and the amount the recipients would pay for a comparable commercial loan absent the guarantee, after adjusting for guarantee fees. Because eligibility for the guarantees is limited to feeder associations, we determine that the program is specific under section 771(5A)(D)(i) of the Act. Therefore, we determine that these loan guarantees are countervailable subsidies, to the extent that they lower the cost of borrowing, within the meaning of section 771(5) of the Act.

To calculate the benefit conferred by the loan guarantees, we applied our short-term loan methodology and compared the amount of interest actually paid during the POI by the associations to the amount that would have been paid at the benchmark rate, as described in the *Subsidies Valuation Information* section, above. We then divided the associations' interest savings by the investigated provinces' total sales during the POI. On this basis, we determine the total subsidy from this program to be 0.01 percent *ad valorem*.

Provision of Goods or Services

F. Prairie Farm Rehabilitation Community Pasture Program

The Prairie Farm Rehabilitation Administration (''PFRA'') was created in the 1930s to rehabilitate drought and soil drifting areas in the Provinces of Manitoba, Saskatchewan, and Alberta. The PFRA established the Community Pasture Program to facilitate improved land use through its rehabilitation, conservation, and management. The goal of the Community Pasture Program is to utilize the resource primarily for the summer grazing of cattle to encourage long-term production of high quality cattle. In pursuit of its objectives, the PFRA operates 87 separate pastures encompassing approximately 2.2 million acres. At these pastures, the PFRA offers grazing privileges and optional breeding services for fees as established by PFRA. The fees are based upon recovery of the costs associated with the grazing and breeding services.

The provision of a good or service is a financial contribution as described in section 771(5)(D)(iii) of the Act. To determine whether a benefit is conferred in the provision of the service, it is necessary to examine whether the provider receives adequate remuneration. According to section 771(5)(E) of the Act, the adequacy of remuneration with respect to a government's provision of a good or service ''* * * shall be determined in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of purchase or sale.''

To determine whether the GOC received adequate remuneration, we compared the prices charged for public pasture services to those charged by private providers of pasture services, adjusted as described below. Given the different nature of the services provided, a simple comparison of the fees charged would not be appropriate. Specifically, we adjusted the private price downward by deducting costs associated with the timing of the sale of cull cows (these costs arise because on private pastures, users are able to remove and cull those cows which do not become pregnant earlier in the season when prices are higher. PFRA patrons, however, have less access to their herds and are only allowed to cull cows at the end of the season when prices are lower.

The GOC argued that there were other differences that should be taken into account for such things as early weaning and timing of the sale of calves (allegedly, PFRA patrons would prefer to wean and cull calves earlier in the season when prices are higher, but PFRA access rules only allow them to cull at the end of the season when prices are lower), transportation to the pasture (allegedly, PFRA patrons live

further away from the pastures and, thus, incur greater transportation expenses), and disease associated with commingled pastures. However, we have not made adjustments for such costs because either the GOC did not establish that such costs were faced solely by public pasture patrons or because the GOC was unable to quantify them.

Comparing the public pasturing price to the adjusted private pasturing price, we determine that the price for private pastures is higher than the price for public pastures. This provides a benefit to the recipients equal to the difference between the amount the recipients pay for public pastures and the amount the recipients would pay for comparable private pasturing.

Because use of Community Pastures is limited to Canadian farmers involved in grazing livestock, we determine that the program is specific under section 771(5A)(D)(i) of the Act. Therefore, we determine that the provision of public pasture services is a countervailable subsidy within the meaning of section 771(5) of the Act.

To measure the benefit, we calculated the difference between the price for public pasture service and the adjusted price for privately provided pasture service. This difference was multiplied by the total number of cow/calf pairs serviced by the PFRA during the POI. We treated the resulting amount as a recurring benefit and divided it by the investigated provinces' total sales during the POI. On this basis, we determine the countervailable subsidy to be 0.02 percent *ad valorem*.

H. Saskatchewan Crown Lands Program

Agricultural Crown land managed by Saskatchewan Agriculture and Food (''SAF'') is made available to all Saskatchewan agricultural producers for lease. Activities carried out on the land include: grazing, cultivation, community pastures, and additional multiple-use activities.

Leases for grazing dispositions range from one to 33-year terms. Beginning in 1997, SAF set rental rates using a formula which takes account of the average price of cattle marketed over a period in the previous year, the average pounds of beef produced from one animal unit month (''AUM''), the AUM productivity rating of the land in question, reduced stocking expectations, and a fair return for the use of the land and resources. AUMs are defined as the amount of forage required to feed one animal for one month while maintaining the vegetative state of the land in good condition. Lessees are responsible for paying taxes, developing and maintaining water facilities and fences, and providing for public access to the land.

The provision of a good or service is a financial contribution as described in section 771(5)(D)(iii) of the Act. As discussed above in connection with the PFRA, a benefit is conferred in the provision of a good or service when the prices charged for government-provided goods or services are less than the prices charged by private suppliers. In the case of the Saskatchewan Crown Lands Grazing Program, a simple comparison of the fees charged would not be appropriate because the grazing rights being offered by the GOS differ from those offered by private suppliers. In this regard, the GOS has provided certain quantifiable adjustments. Specifically, we adjusted the private price downward by deducting costs for the construction of fences and water dugouts, and the cost of paying property taxes. Although the GOS argued that there were other differences that should be taken into account for such things as multiple-use requirements, we have not made adjustments for such costs because the GOS was unable to quantify them. Comparing the public grazing lease rate to the adjusted private lease rate, we determine that the price for private leases is higher than the price for a public grazing lease.

Because the cattle industry is a predominant user of the Saskatchewan Crown Lands Program, we determine that the program is specific under section 771(5A)(D)(iii) of the Act. Therefore, we determine that the provision of public grazing rights is a countervailable subsidy within the meaning of section 771(5) of the Act.

To measure the benefit, we calculated the difference between the price per AUM for a public grazing lease and the adjusted price per AUM for a private grazing lease. We multiplied this difference by the total AUM provided by SAF. We treated the resulting amount as a recurring benefit and divided it by the investigated provinces' total sales during the POI. On this basis, we determine the countervailable subsidy to be 0.02 percent *ad valorem*.

I. Manitoba Crown Lands Program

Agricultural Crown land is managed by Manitoba Agriculture Crown Lands (''MACL'') whose primary objective is to administer the disposition of Crown lands and to improve the lands' productivity. Crown agricultural land is made available to farmers through cultivation and grazing leases. Lease holders are required to pay an amount-in-lieu of municipal taxes as well as to construct and maintain fences and watering facilities. Also, the public has access to Crown lands at all times without prior permission of the lessee for such activities as wildlife hunting, forestry, winter sports, hiking, and berry picking. During the POI, MACL administered 1.6 million acres of grazing leases accounting for 707,699 AUMs.

Leases for grazing dispositions range from one to fifty year terms. MACL sets rental rates each year by multiplying the number of AUMs the leased land is capable of producing in an average year by an annual AUM rental rate. The AUM rental rate is based on recovering the administrative costs for the program using the previous year's actual costs.

The provision of a good or service is a financial contribution as described in section 771(5)(D)(iii) of the Act. As discussed above in connection with the PFRA, a benefit is conferred in the provision of a good or service when the prices charged for government-provided goods or services are less than the prices charged by private suppliers. In the case of the Manitoba Crown Lands Program, a simple comparison of the fees charged would not be appropriate because the grazing rights being offered by the GOM differ from those offered by private suppliers. In this regard, the GOM has provided certain quantifiable adjustments. Specifically, we adjusted the private price downward by deducting costs for the construction of fences and watering facilities, and the cost of paying an amount-in-lieu of municipal taxes. Although the GOM argued that there were other differences that should be taken into account for such things as multiple-use requirements, we are not making these adjustments because the GOM was unable to quantify them. Comparing the public grazing lease to the adjusted private lease price, we determine that the price for private leases is higher than the price for a public grazing lease.

Because livestock industries, including cattle, are predominant users of the Manitoba Crown Lands Program, we determine that the program is specific under section 771(5A)(D)(iii) of the Act. Therefore, we determine that the provision of public grazing rights is a countervailable subsidy within the meaning of section 771(5) of the Act.

To measure the benefit, we calculated the difference between the price per AUM for a public grazing lease and the adjusted price per AUM for a private grazing lease. We multiplied this difference by the total AUM provided by MACL. We treated the resulting amount as a recurring benefit and divided it by the investigated provinces' total sales

during the POI. On this basis, we determine the countervailable subsidy to be less than 0.01 percent *ad valorem*.

J. Alberta Crown Lands Basic Grazing Program

Over time, Alberta has developed a system for granting grazing rights on public land. Grazing rights began to be issued on public lands in the early 1930s. Today, through Alberta Agriculture and Municipal Affairs, over 10.5 million acres of land are managed by the GOA including a grazing component of approximately two million AUMs.

Leases for grazing rights range from one to twenty year terms, but, in practice, all leases are renewed if the lessee is in good standing. Alberta's Public Lands Act dictates how rental prices will be set. Specifically, section 107 states that annual rent will be equal to a percentage of the forage value of the leased land. When determining the forage value of the land, the administering authority is required to consider the grazing capacity of the land, the average gain in weight of cattle on grass, and the average price per pound of cattle sold in the principal livestock markets in Alberta during the preceding year. Beyond paying the lease fee, lessees are also required to construct and maintain capital improvements necessary for livestock and must comply with all multiple-use and conservation restrictions imposed by the government on the land. Lastly, lessees must pay school and municipal taxes charged on the land being leased.

As noted above, Crown lands have various multiple-use elements, from recreation to oil and gas operations, which are often in conflict with one another. The legislation that manages these diverging interests is the Surface Rights Act. Under Alberta law, the surface of land in the province can be owned by either private entities or the government, but all rights to the subsurface of the land have been reserved to the government. On occasion, the GOA leases subsurface rights to industrial operators (*e.g.*, oil and gas companies) and the Surface Rights Act lays the ground rules for resolving differences between those who control the surface rights and those who lease the subsurface rights.

Section 12(1) of the Surface Rights Act reads that, ''no operator has a right of entry in respect of the surface of any land* * *until the operator has obtained the consent of the owner and the occupant of the surface of the land or has become entitled to right of entry by reason of an order of the Board.* * *'' It appears from the record that consent from the owner and occupant is usually contingent upon a compensation package being agreed upon between the operator and the owner and occupant. That is, the operator will agree to pay a certain amount of compensation for damages, disruption, access, and other factors to the owner and occupant. If the operator is unable to reach an agreement with the owner and occupant, the operator can ask the Surface Rights Board for a right of entry. In such cases, the Surface Rights Board will issue a right of entry and determine the appropriate amount of compensation. In determining the amount of compensation payable, the Board may consider the market value of the land, the loss of use by the owner or occupant of the area granted to the operator, the adverse effect of the area granted to the operator on the remaining land, the nuisance, inconvenience, and noise caused by the operations, damage to the land granted to the operator, and any other factors the Board considers relevant.

We determine that grazing leases granted under the Albert Crown Lands Basic Grazing Program are being provided to ranchers grazing livestock, a specific group, within the meaning of section 771(5A)(D)(i). Moreover, we determine that the provision of grazing leases is a financial contribution as described in section 771(5)(D)(iii) of the Act (provision of a good or service). Therefore, to determine whether these grazing leases result in a countervailable subsidy it is necessary to examine whether they confer a benefit on the recipients of the leases.

As discussed above in connection with the PFRA, a benefit is conferred in the provision of a good or service when the government receives less than adequate remuneration. Normally adequacy of remuneration can be measured by reference to the prices being charged for the good or service by private suppliers. In the case of grazing rights provided by the GOA, however, a simple price comparison would not be appropriate.

First, as discussed in connection with the grazing programs of other provinces, certain adjustments must be made to reflect the different costs imposed on the lessees of private and public land. Specifically, we adjusted the average private price downward by deducting costs for the construction of fences and water improvements, the cost of paying property taxes, and a multiple-use cost associated with limitations on forage (we have also taken into account multiple-use income, as noted below). Although the GOA argued that there were other differences that should be taken into account for such things as differences in operating and capital costs, we have not made adjustments for such costs because the GOA did not adequately support these claimed adjustments. Comparing the public grazing lease price to the adjusted private lease price, we determine that the price for private leases is higher than the price for a public grazing lease.

Second, we believe the compensation paid by oil and gas operators to lessees of private and public land to gain access to the oil and gas resources must be accounted for. In response to our request for information and argumentation about so-called ''Bill 31'(which will amend the Public Lands Act and the Surface Rights Act), the GOA pointed to provisions in the Surface Rights Act that appear to give owners and lessees of private and public land equal rights to compensation. In both cases, the oil and gas operator is to negotiate compensation agreements with the owners and lessees before gaining access to the land. If agreement cannot be reached, the operator appeals the matter to the Surface Rights Board. In deciding the amount of compensation to be awarded to the owners and lessees of private or public land, the Surface Rights Board applies the same rules. Moreover, the GOA claims, the amount of compensation received by any owner or lessee cannot be considered excessive, because if the owner or lessee attempts to obtain too large an amount, the oil and gas operator can simply apply to the Surface Rights Board to set the correct amount of compensation.

Although the statutory provisions in the Surface Rights Act cited by the GOA are consistent with the arguments it has put forward, other information on the record suggests that the compensation received by lessees of public land is excessive. Beginning in March 1997, the GOA undertook a study to examine agricultural leases in the province. One of the main issues examined in the study was compensation for ranchers leasing grazing rights on public lands. The study resulted in a report and, eventually, legislation (Bill 31). Although Bill 31 has not yet been put into effect, it seems clear that one concern the legislation seeks to address is that the province, as owner of the public land, should receive some portion of the compensation now received by lessees of the public land.

While this, in itself, does not necessarily mean that the compensation currently received by lessees of public land is excessive when compared to the compensation received by lessees of private land, statements made at the time that Bill 31 was proposed and

debated, lead us to conclude that the compensation received by lessees of private and public land is not equivalent. Specifically, the government's spokesperson on behalf of the bill stated: ''It (Bill 31) does another thing as well: it ensures that public land leasing arrangements are more equitable with private land leasing arrangements. Since the province is the landowner of public land in the right of all Albertans, we were told by our colleagues and those making submissions that the province should act like a landowner. This means that leasing arrangements should be more comparable to the private sector'' (statement by Mr. Thurber, Alberta Hansard, April 14, 1999, page 1035). Similarly, ''the intent of amendments to the Surface Rights Act are to redistribute payments to the landowner (the province) and the agriculture disposition holder (the lessee of public land) more in line with private land arrangements' (statement by Mr. Thurber, Alberta Hansard, May 3, 1999, page 1396).

These statements appear to support the conclusion that private owners receive more in compensation than the GOA does as owner. There is no indication in the record that the amount of compensation paid by oil and gas operators for private lands exceeds the amount of compensation paid for public lands. Therefore, we conclude that the lessees of public land receive greater compensation than their counterparts on private land.

If our conclusions are correct, then the differences in compensation amounts to lessees of public and private land would not be reflected in a comparison of fees for the two types of grazing rights. This is because the relatively lower level of compensation received by the lessees of private land will cause that fee to be lower than it would be if they received the higher amount of compensation.

Therefore, to calculate the difference in compensation amounts that is not reflected in a comparison of fees for the two types of grazing rights, we have attempted to measure the remuneration that we believe the GOA would have received, as owner of the public land, if its leasing arrangements were ''in line with private land arrangements.'' We note that because such information regarding compensation is not available on the record of this investigation, our calculation is an estimate based upon the facts available.

Information that is on the record indicates that total compensation earned by public lessees is approximately C$40 million per year. It appears that this amount represents compensation for damages, disruption, access, and other factors. Because the law indicates that both private and public lessees are entitled to compensation for damages and disruption we expect that a portion of this C$40 million represents an amount of compensation that would be paid to any lessee regardless of whether the land being leased was private or public. Thus, it would be inappropriate to assume that the C$40 million figure represents compensation that is only obtained by public lessees because they are leasing public land.

Therefore, it is necessary to estimate the portion of the compensation received by lessees of public land attributable to damages and disruption (which would be the same for a private lessees) versus compensation for access and other factors. In this respect, the GOA has stated that the average compensation package determined by the Surface Rights Board for both public and private lessees amounted to C$1,100 per year. Given the number of grazing leases on public land affected by subsurface operations, the total amount attributable to compensation for damages and disruption on public land would be approximately C$15.9 million per year. According to the rules followed by the Surface Rights Board in establishing the amount of compensation, this amount would represent the compensation for damages and disruption only. The remainder of the compensation (C$24.1 million) would be for access and other factors.

We recognize that this is a crude estimate of the amount of compensation that could be expected to flow to the GOA if it received the compensation that we believe currently flows to holders of public land leases. For example, while the C$40 million amount is widely reported, it is not clear where the estimate came from or how it was calculated. Moreover, the amount we have selected, C$24.1 million, is at the upper end of the possible range of estimates. (*See* statement by Dr. Pannu, a member of the Alberta legislature, as reported in the Alberta Hansard, May 11, 1999, page 1627: ''it's difficult at this point to make a reliable assessment of what additional revenues these changes in the leasing arrangements proposed in this bill will generate for the public treasury. I have seen different figures. I think it could be close to $13 million to $15 million or perhaps more * * *'') We believe that a conservative estimate is appropriate in light of the limited information available to the Department to ensure that a negative final determination is warranted.

Therefore, because public lessees can expect to receive C$24.1 million more in compensation by renting public land as opposed to private land, the public land is more valuable. However, as noted above, we have concluded that the differences in compensation amounts to lessees of public and private land are not reflected in a comparison of fees for the two types of grazing rights. That is, the government is not charging a higher price for its land to capture this value and, thus, is not being adequately remunerated for its provision of public land.

To measure the benefits received under the Alberta Crown Lands Basic Grazing Program, we have combined the difference calculated by comparing the grazing fees paid for public and private land with the difference in compensation described above. We treated the resulting amount as a recurring benefit and divided it by the investigated provinces' total sales during the POI. On this basis, we determine the countervailable subsidy to be 0.65 percent *ad valorem*.

Other Programs

K. Northern Ontario Heritage Fund Corporation Agriculture Assistance

The Northern Ontario Heritage Fund Corporation (''NOHFC'') was established in 1988 as a Crown corporation. Its purpose is to promote and stimulate economic development in northern Ontario. NOHFC focuses on funding infrastructure improvements and development opportunities in northern Ontario. Assistance for these projects is available through forgivable performance loans, incentive term loans, and loan guarantees.

With respect to agricultural projects, all assistance provided by NOHFC is in the form of forgivable performance loans. The types of agricultural projects funded include capital projects, marketing projects and research and development projects. Fifty percent of a project's capital costs are eligible for funding, up to a maximum of C$2.5 million. For marketing projects, fifty percent of the project costs may receive funding, up to a maximum of C$500,000. For research and development projects, 75 percent of the project costs may receive funding, up to a maximum of C$500,000. The loans made available for these projects are interest-free and normally forgiven after two to three years. The extent of debt forgiveness is dependent upon the project meeting its target of increasing the value of farm production by an amount equal to the NOHFC contribution.

Debt forgiveness is a financial contribution as described in section 771(5)(D)(i) of the Act, which provides a benefit to the recipients equal to the amount of the debt forgiven. Because benefits under this program are only available in northern Ontario, we determine that the program is regionally specific under section 771(5A)(D)(iv) of the Act. Therefore, we determine that this debt forgiveness is countervailable within the meaning of section 771(5) of the Act.

We further determine that this debt forgiveness is non-recurring because the recipients could not expect to receive it on an ongoing basis. However, because the benefit to cattle producers in Ontario was below 0.50 percent of the investigated provinces' sales in the year of receipt in each of the relevant years, we expensed the debt forgiveness in the year received. To calculate the benefit for the POI, we divided the total amount of the forgiven debt by the investigated provinces' total sales during the POI. On this basis, we determine the countervailable subsidy to be less than 0.01 percent *ad valorem*.

Additionally, we determine that a countervailable subsidy is conferred because no interest is charged on these loans. Under section 771(5)(E)(ii) of the Act, a benefit arises when loan recipients pay less on government provided loans than they would pay on comparable commercial loans. Pursuant to section 355.49(f) of the 1989 Proposed Regulations, we have treated the balances outstanding during the POI as interest-free, short-term loans. We calculated the benefit from these loans by dividing the amount of interest due at the benchmark rate by the investigated provinces' total sales during the POI. On this basis, we determine the countervailable subsidy to be less than 0.01 percent *ad valorem*.

To calculate the total benefit to cattle producers under this program, we summed the benefit calculated for the forgiven debt and the interest-free loans. On this basis, we determine the total subsidy from this program to be less than 0.01 percent *ad valorem*.

L. Ontario Livestock, Poultry, and Honeybee Protection Act

This program, which is administered by the Ontario Ministry of Agriculture, Food and Rural Affairs, provides compensation to livestock producers whose animals are injured or killed by wolves or coyotes. Producers apply for, and receive, compensation through the local municipal government. The Ontario Ministry of Agriculture, Food and Rural Affairs reimburses the municipality. Grants for damage to live cattle cannot exceed C$1,000 per head. Although the Ministry of Agriculture does not track the proportion of benefits under this program going to dairy cattle or beef cattle producers, the GOO has reported that beef cattle producers are believed to derive the majority of the benefits from the program.

A grant is a financial contribution as described in section 771(5)(D)(i) of the Act, which provides a benefit to recipients in the amount of the grant. Because this program is limited by law to livestock producers, poultry farmers, and beekeepers, we determine that the program is specific under section 771(5A)(D)(i) of the Act. Therefore, we determine that these grants are countervailable within the meaning of section 771(5) of the Act.

We treated the grants received as a recurring benefit because livestock producers can expect to receive the grants every year. To calculate the benefit, we divided the total amount of grants received by the investigated provinces' total sales of live cattle during the POI. On this basis, we determine the countervailable subsidy to be 0.01 percent *ad valorem*.

M. Ontario Rabies Indemnification Program

This program is administered by the Farm Assistance Branch of the Ontario Ministry of Agriculture, Food and Rural Affairs. It is designed to encourage farmers to report cases of rabies in livestock by compensating livestock producers for damage caused by rabies. Farmers may receive grants up to a maximum of C$1,000 per head of cattle under this program. Sixty percent of the grants are funded by the GOO and 40 percent by the GOC.

A grant is a financial contribution as described in section 771(5)(D)(i) of the Act which provides a benefit to recipients in the amount of the grant. Because the legislation establishing this program expressly limits these grants to livestock producers, we determine that the program is specific under section 771(5A)(D)(i) of the Act. Therefore, we determine that these grants are countervailable within the meaning of section 771(5) of the Act.

We treated the grants received as a recurring benefit because farmers can expect to receive the grants every year. To calculate the benefit, we divided the total amount of grants received by the investigated provinces' total sales of live cattle during the POI. The amount of the total amount of grants was taken from updated information supplied to the Department at verification. On this basis, we determine the countervailable subsidy to be less than 0.01 percent *ad valorem*.

N. Saskatchewan Livestock and Horticultural Facilities Incentives Program

The purpose of this program is to promote the diversification of Saskatchewan's rural economy by encouraging investment in livestock and horticultural facilities. This program allows for an annual rebate of education and health taxes paid on building materials and stationary equipment used in livestock operations, as well as greenhouses, and vegetable and raw fruit storage facilities.

A tax benefit is a financial contribution as described in section 771(5)(D)(ii) of the Act which provides a benefit to the recipient in the amount of the tax savings. Because the legislation establishing this program expressly limits the tax benefits to the livestock and horticulture industries, we determine that the program is specific under section 771(5A)(D)(i) of the Act. Therefore, we determine that this tax benefit is countervailable within the meaning of section 771(5) of the Act.

In calculating the benefit, we treated the tax savings as a recurring benefit and divided the tax savings received by the investigated provinces' total sales during the POI. On this basis, we determine the countervailable subsidy to be less than 0.01 percent *ad valorem*.

II. Programs Determined To Be Not Countervailable

A. Canadian Wheat Board

Introduction

The Canadian Wheat Board (''CWB'') has the exclusive authority to market Canadian feed and malting barley in export markets. In the Canadian domestic market, the CWB has exclusive marketing authority only with respect to malting barley. The petitioner alleges that the CWB's pooling system (described below) sends distorted market signals to Canadian farmers. Further, the petitioner argues that the system of marketing feed barley in Canada imposes excessive costs on farmers, with the result that less feed barley is exported than there otherwise would be. Consequently, the petitioner alleges, more feed barley is available on the domestic market, which artificially lowers prices paid by Canadian cattle producers. Although the CWB system may not involve the explicit export restriction present in *Certain Softwood Lumber Products from Canada,* 57 FR 22570 (May 28, 1992) (''*Lumber*'') and *Leather from Argentina,* 55 FR 40212 (October 2, 1990) (''*Leather*''), in the

petitioner's view, the CWB's control over, and operations in, the feed barley market have the same result as the export restrictions which the Department found countervailable in those cases.

In the *Preliminary Determination,* we preliminarily concluded that, even if the CWB controlled exports, it nonetheless did not provide a benefit to Canadian producers of live cattle because Canadian domestic prices were not lower than prices in the United States in the POI. In making our price comparisons for the *Preliminary Determination,* we compared U.S. prices for feed barley in Great Falls, Montana, with several Canadian domestic prices. We preliminarily found that Canadian domestic prices were comparable to U.S. prices.

Since the *Preliminary Determination,* we have conducted a thorough analysis of all aspects of the Canadian feed barley market and its relation to the cattle industry. We analyzed where barley is produced and consumed within Canada, the total production of both feed and malting varieties of barley, marketing options available to barley farmers, exports of feed barley, the operations of the CWB, feed barley prices within and outside the area in Canada under the control of the CWB (*i.e.,* the ''designated area''), and additional feed barley prices in the United States. We find that the CWB has extensive control over the feed barley export market and that its operations in that market can, and do, have a major impact in the domestic feed barley market. However, as in the *Preliminary Determination,* we find that the operations of the CWB did not provide a benefit to the producers of live cattle during the POI.

Canadian Barley Production

There are two primary agricultural areas in Canada: the prairies in western Canada (Alberta, Saskatchewan and Manitoba), and southern Ontario and Quebec. Eighty percent of Canadian farmland is in the prairies. The large majority of Canadian grain is grown on the prairies, although some grain is also grown in the southernmost portions of Ontario and Quebec.

The growing conditions in western Canada and the eastern provinces are very different, which leads to different growing patterns in each area. The climate in the prairies is drier and cooler with a shorter growing season; the predominant crops are barley, wheat, and oilseeds. Conversely, because Ontario is warmer and receives more rainfall, the climate there is more conducive to growing corn and soybeans. While Ontario has some barley production, barley is not the predominant crop in the area.

In the most recent crop year (1998/1999), Canada produced a total of 12.7 million metric tons of barley. Over ninety percent of this barley was grown in the prairies; 400,000 metric tons were grown in Ontario. The percentage of prairie production by province was: 48 percent in Alberta, 37 percent in Saskatchewan, 14 percent in Manitoba, and less than one percent in British Columbia. Although 70 percent of Canadian barley is seeded as malting varieties (for which higher prices can be obtained), only 30 percent is actually sold as malting barley. The malting barley that is not sold for malting is consumed as feed barley.

Almost half of all Canadian barley production occurs in Alberta, in a north-south belt extending from Lethbridge in the south to Edmonton in the north. From Edmonton, the barley growing area arcs in a southeastwardly direction towards Winnipeg. A small portion of southeastern Alberta and a much larger section of southern Saskatchewan are less productive for growing barley because of less rainfall and warmer temperatures.

In Ontario, the barley growing area is primarily located on the peninsula that extends south between Lake Huron, on the west, and Lakes Erie and Ontario, on the east. Some grain is also grown around Ottawa. The primary crop grown in Ontario is corn; barley production occurs on the fringe of the growing area where corn cannot grow because of cooler temperatures or unfavorable soil conditions.

Canadian Cattle Production

Canadian beef cattle production is primarily concentrated in western Canada (82 percent), with 12 percent in Ontario, and 5 percent in Quebec. Western Canadian beef production by province is: 46 percent in Alberta, 21 percent in Saskatchewan, 11 percent in Manitoba, and 5 percent in British Columbia. Similar to barley production, almost half of all Canadian beef cattle production occurs in Alberta. Many farmers throughout the prairies produce both cattle and barley. The primary consumers of feed barley are feedlots, and the majority of Canadian feedlots (approximately 70 percent) are located in southern Alberta, between Lethbridge and Calgary.

CWB Organizational Principles and History

The CWB had its origins in the early 1900s. It was during this time that two of the fundamental principles of the CWB and the marketing of Canadian barley were established: single-desk selling and the ''pooling'' of costs and revenues. Since we are only concerned with feed barley, single-desk selling in the context of this investigation means that the CWB is the sole exporter of western Canadian feed barley. This authority requires barley farmers to sell via a single entity in export markets rather than competing against one another. Barley farmers can compete with each other with respect to feed barley sales in Canada—though not with respect to malting barley sales in Canada. In theory, according to the CWB, the absence of multiple sellers and the ability to sell at different prices in different markets allows the single desk seller to obtain a higher overall price for Canadian grain.

The pooling mechanism is perhaps the defining feature of the CWB's operations. The CWB operates a separate ''pool'' for each of the four crops under its authority (wheat, durum wheat, feed barley and ''designated'' or malting barley). Pooling means that the CWB pays every farmer the same amount for a given quantity and quality of grain based on the weighted-average price received for all the barley marketed in the pool year, regardless of when in the crop year the farmer sells to the CWB and regardless of the specific sales prices the CWB realizes on the individual sales of that grain. (The payment mechanism—involving initial, adjustment, interim and final payments—is discussed below.) According to the CWB, the pooling mechanism is a risk management tool designed to protect farmers from adverse price fluctuations that may occur throughout the year.

Prior to 1974, the CWB controlled all sales of barley, including domestic sales of feed barley. Responding to pressure from eastern livestock producers who wanted access to western grain and western grain producers who wanted to sell grain in the east, the GOC removed domestic sales of feed barley from the CWB's jurisdiction in 1974. In the same year, the GOC established the Reserve Stock Program, apparently to ensure that western livestock producers would continue to have a reliable source of feed barley. This program was terminated in 1979.

In 1984, the Western Grain Transportation Act (''WGTA'') came into effect. Under this program, the GOC paid the difference between the ''crow rate'' (a ceiling on rail rates dating back to 1897) and an unregulated rate. In 1985, the province of Alberta began the Crow Benefit Offset Program to offset the higher local grain prices caused by

the WGTA. The program essentially subsidized the purchase of barley by livestock producers and may have resulted in an increase of livestock production in the province. The WGTA subsidies continued until 1995.

On August 1, 1993, the GOC permitted non-CWB entities to export barley, thereby creating the so-called ''Continental Barley Market'' (''CBM''). As a result of Canadian judicial intervention, the CBM lasted only until September 10, 1993. During the CBM, exports of Canadian feed barley to the United States increased dramatically compared to prior periods. Whether this was due to the ability of individual farmers to export or other factors (*e.g.*, flooding in the United States) has been subject to much dispute. Economists also differ on the impact of the CBM on U.S. and Canadian prices, specifically, whether the CBM resulted in the convergence of U.S. and Canadian domestic feed prices. The petitioner suggests that the CBM is indicative of the market that would exist in the absence of the CWB.

CWB Act

The current statutory authority for the CWB was enacted in 1935. The CWB Act: (1) Codifies the CWB's exclusive control over feed and malting barley exports; (2) establishes the governance structure and mission of the CWB; and (3) delineates the relationship between the GOC and CWB. Under section 45 of the CWB Act, ''no person shall export from Canada [wheat or barley] owned by a person other than the Board.'' This provision grants the CWB its export monopoly authority with respect to all barley produced in Canada. Section 45 of the CWB Act also grants the CWB authority over interprovincial trade in barley.

During the POI, the CWB was a Crown corporation governed by five commissioners appointed by the GOC. Farmers were represented on an advisory board that could only make recommendations to the commissioners. Pursuant to section 7 of its statutory authority, the CWB's mandate is to sell grain ''for such prices as it considers reasonable with the object of promoting the sale of grain produced in Canada in world markets.''

The CWB Act establishes the following three financial relationships between the CWB and the GOC: (1) The GOC guarantees all approved borrowings of the CWB, (2) the GOC guarantees the initial payment, adjustments, and interim payments made to farmers (discussed further below), and (3) the GOC guarantees credit extended to purchasers of CWB grain. (*See* sections 6, 7 and 19 of the CWB Act.)

In addition to the financial ties between the GOC and the CWB, the CWB Act promulgates other means by which the GOC may exert authority over CWB operations. Section 18 of the CWB Act allows for GOC policy directions via an order by the Governor-in-Council (''GIC''). Under section 32, the amount of the initial payment must be approved by the GOC. Finally, the CWB is required to provide a proprietary, detailed annual reporting of the CWB's operations to the GIC.

1998 Amendment to the CWB Act

In 1996, the GOC established the Western Grain Marketing Panel (''WGMP'') to review the marketing system of western Canadian grain. As a result of the WGMP, an amendment to the CWB Act (''the amendment'') was passed in June 1998 and became operational on December 31, 1998. Parts of the amendment were implemented in June and December 1998, while others have yet to be formally implemented. Below is a discussion of certain key WGMP recommendations and the provisions that were passed to implement these recommendations.

Change in legal status. As noted, under the old CWB Act, the CWB was a Crown corporation. Pursuant to the amendment, it became a ''shared-governance'' corporation. The new governance structure created by the amendment granted more direct control of the CWB to the farmers through the Board of Directors. Specifically, ten members of the new Board of Directors are elected by grain producers and the remaining five members, including the president, are appointed by the GOC. The new Board of Directors is responsible for managing the business and affairs of the CWB and directing strategic planning. The old Advisory Board was disbanded.

Removal of feed barley from CWB jurisdiction. The WGMP recommended that the CWB should remain solely responsible for marketing malting barley, but that farmers should be allowed to export feed barley directly or sell it to the CWB. In 1997, the GOC held a plebiscite asking farmers if they wanted to continue the current marketing system or sell their barley without the CWB. Sixty-three percent of farmers voted to maintain the current system. Thus, the CWB's exclusive control over both feed and malting barley exports has continued.

Early closing of pools. Under the old CWB Act, the CWB could only make final payments on pools in January following the end of the crop year (*e.g.*, January 1999 for the 1997–98 crop year). The amendment grants the CWB the authority to close a pool early (*i.e.*, prior to the end of the crop year). The CWB wanted the ability to close a pool in situations where export prices decline precipitously. Under these circumstances, the CWB could terminate the existing pool once it became apparent that prices were steadily declining. Farmers who delivered their barley to the pool would receive the weighted-average price received during the time the pool was open. After the old pool was closed, a new pool could be established. The first pool would reflect the higher prices in the beginning of the year, and the second pool would reflect the lower prices at the end of the year. By ending a pool early, the pool payment farmers receive for their grain would be more reflective of their initial expectations. Ending pools early in a falling market could also be used as a mechanism to ensure that the GOC would not have to cover a pool deficit (*i.e.*, reimbursing the CWB for the difference between the payments made to farmers in the course of the crop year and the actual revenues received on barley pool sales).

Cash Purchase Option. As recommended by the WGMP, the amendment allows the CWB to make cash purchases from farmers and other participants on the open market. The reason for this change is to allow the CWB to purchase grain directly from farmers when the CWB has selling opportunities but the CWB's estimates of the final pool payment the farmer will receive—the Pool Return Outlooks and Estimated Pool Returns (the PROs and EPRs, discussed below)—are not attracting sufficient supplies to take advantage of those opportunities. However, prior to the adoption of the amendment in 1998, the livestock industry expressed concern that use of this provision by the CWB might raise feed barley prices to the Canadian livestock industry. This provision has not yet been proclaimed in force by Parliament. Therefore, the cash purchase option has not yet been exercised by the CWB.

CWB Operations

The Canadian crop year is from August 1 to July 31. Barley is normally planted in the spring. Harvesting begins the first or second week of August and may continue through October, depending on the weather. Once the grain is harvested, the farmer can begin to deliver grain immediately through the acreage-based system, or through the ''delivery contract system'' throughout the year. Relatively small amounts of

grain are delivered under the acreage-based system. The primary method of sale and delivery to the CWB is through the delivery contract system.

Under the delivery contract system, there are four contract series throughout the year, each with a different deadline (for the 1997–98 crop year, the deadlines were: series A, October 31; series B, December 31; series C, February 27; and series D, May 29). On the contract, the farmer identifies, *inter alia,* the station to which he normally delivers (he can deliver anywhere he wants), the series for which he is offering grain, and the net amount he expects to deliver. Because the farmer will not know the exact weight of his barley until it is delivered, the CWB allows an 85 percent tolerance.

After the CWB receives all contracts offered under a particular series, it tabulates the offers and determines whether it will accept all the grain. The factors that are taken into consideration in this analysis are: the amount and types of grain offered, the sales requirements identified up to that point, and any transportation constraints. The acceptance rate for every series in the POI was 100 percent. In the last five years, the CWB has consistently accepted all the barley offered to it, except for series C in the 1995–96 crop year, when it only accepted fifty percent of the grain offered.

Once the series contracts have been offered and accepted, delivery of the barley must be ''called'' by the CWB. A ''call'' or ''delivery call'' is essentially an instruction issued by the CWB to farmers telling them when and where to deliver their barley. The CWB must issue a call before a farmer can deliver his grain.

A number of factors are analyzed by the CWB in determining when the grain should be called into the handling system: the total amount offered, immediate sales commitments, the quantity of grain already in the handling system, where grain is located, any transportation constraints, and outstanding delivery calls (if any). Any one call can be less than 100 percent of the accepted series amount. However, acceptance of a farmer's offer commits the CWB to call all the grain accepted at some point before the end of the crop year. Once a call is announced, farmers may deliver their grain.

Pursuant to section 24 of the CWB Act, farmers are legally prevented from delivering to a grain elevator unless, *inter alia,* they have a permit book, the grain was produced on the lands described in the permit book, and the quantity of grain delivered does not exceed the amount authorized by the CWB. When the farmer delivers the grain to the elevator, the elevator manager grades it, and makes the initial payment (discussed below) on behalf of the CWB to the farmer. The delivery is recorded in the farmer's permit book and applied against the contract the farmer established with the CWB to calculate the net outstanding balance of grain due under that contract.

Every farmer that sells into the pool receives the payment for his crop in installments. Upon delivery of the grain to the elevator, the farmer receives the published initial payment adjusted for freight to either Vancouver or St. Lawrence (the two primary export points), less any grain company deductions for elevation and cleaning. The initial payment set by the CWB is based on market projections, CWB-specific sales prospects, and an evaluation of export prices. While there is no fixed rule, initial payments historically have been set at 70–75 percent of the projected final return. As noted above, the initial payment must be approved by the GOC.

During the year, the CWB may make adjusted or interim payments. After the pool year is closed, the farmer normally receives a final payment. The sum of these payments equals the ''pool payment,'' which is the total return the farmer receives for barley delivered to the CWB.

Once the barley has been called, delivered and stored, it must eventually be moved to an export point. This is generally done by rail. The allocation of the two Canadian railroads' resources is arranged by a government/private sector committee called the Car Allocation Policy Group (''CAPG''). This group sets policies and coordinates the movement of barley and other grain through the system. CAPG has representatives from grain companies, railways, farmers, small shippers, and the CWB. It performs capacity planning for four-month and one-year periods. It evaluates market demand information from shippers and supply information from railroads to determine where and when the transportation constraints will arise. During high usage periods, the CAPG attempts to allocate resources equally; in other words, access is not rationed by price. (*See* section 28 of the CWB Act, which enables the CWB to ''provide for the allocation of railway cars.'')

Pricing Signals

Starting in late February to early March prior to the crop year (*e.g.,* February 1997 for the August 1,1997/July 31, 1998 crop year), the CWB publishes, on a monthly basis, the Pool Return Outlook (PRO), which is a range within which the CWB expects the final pool return to fall. The monthly PROs are the main tool a farmer has in determining how much barley to grow and in deciding whether to sell his grain domestically, or to the CWB for export. Once the pool year is in progress and sales have been completed, the CWB has a better idea of the final pool return. In March of the crop year (*e.g.,* March 1998 for the August 1, 1997/July 31, 1998 crop year), the CWB announces the Estimated Pool Return (EPR), which is a fixed number, not a range. EPRs are issued again in June and September.

When determining the PROs and EPRs for feed barley, many factors are examined, including: harvest conditions, foreign subsidies, carryover stocks from the previous year, and the quality and quantity of the U.S. corn crop. (The price of corn and barley are closely related over time because both are used as livestock feed and both have similar nutritional value for livestock. In the United States, corn is the primary feed for cattle.) Both the PROs and EPRs generally reflect prices in export markets rather than the domestic market.

The Producer Direct Sales Program

The Producer Direct Sales (''PDS'') Program allows farmers to export barley on their own account to the U.S. market. Section 46 of the CWB Act and section 14 of the CWB regulations provide the mechanism by which the CWB grants export licenses under the PDS program to individual farmers both inside and outside the designated area (*i.e.,* the area under the control of the CWB).

Pursuant to section 46(d) of the CWB Act, the terms and conditions for the granting of licenses can include:

> * * * recovery from the applicant by the Board * * * of a sum that, in the opinion of the Board, represents the pecuniary benefit enuring to the applicant pursuant to the granting of the license, arising solely by reason of the prohibition of exports of [the covered products] without a license and the then existing differences between prices of [the covered products] inside and outside Canada.

We discussed this section of the CWB Act extensively at verification. One literal interpretation of section 46(d) is that it requires that any difference between the price the CWB offers a farmer and the price the farmer can obtain by exporting his barley independently must be paid to the CWB in return for the granting of the export license. Obviously, such an interpretation would discourage the exportation of barley by any entity other than the CWB. In practice, the CWB has

interpreted this provision to mean that the farmer wishing to export independently must pay the difference between the total pool return and a price set under the PDS program. Although the precise manner by which the CWB determines this price is proprietary, in essence, the PDS price is based upon the export opportunities of the CWB.

In order to export barley under the PDS program, farmers within the designated area must (at least, on paper) deliver their grain to the CWB—for which they will receive the normal pool payments—and then repurchase that barley at the posted daily PDS price. In the 1997–1998 crop year, a very small percentage of Canadian feed barley exports went through the PDS program.

Analysis of CWB Operations

The Canadian grain marketing system—of which the CWB is an integral part—is highly regulated and institutionalized. Certain CWB policies and programs indicate that the operations of the CWB, with respect to feed barley, may have goals other than promoting the interests of barley farmers. Moreover, while there may not be an overt restraint on exports by the CWB, there are certain aspects of the CWB pooling system and Canadian grain marketing system overall that could have the same result as an overt restraint on exports.

As noted above, the CWB's mandate is to sell grain ''for such prices as it considers reasonable with the object of promoting the sale of grain produced in Canada in world markets.'' According to its annual reports (*see*, for example, page 2 of the CWB's 1997–1998 Annual Report in Exhibit CWB–34), the CWB's mission is to maximize returns to western Canadian grain farmers. However, the CWB has also stated that it must balance this objective with the need of processors to source grain at a price that allows them to compete in the finished product market (*see*, for example, page 17 of the CWB's 1995–1996 Annual Report in the petitioner's November 6, 1998 submission at exhibit A–1 and verification exhibit CWB–14). Arguably, this pricing policy with respect to downstream processors, along with the CWB value-added program discussed below, demonstrates that the operations of the CWB may be guided by government policy objectives inconsistent with the actions expected of a normal market actor.

Similarly, we verified that the CWB has a value-added program intended to increase the domestic value-added of the cereal grains it markets. Although the current objective of the value-added program relates primarily to the milling and malting industries, the value-added program is very broad and includes anything involved in processing cereal grains. Some value-added programs have centered on the livestock industry.

During the 1997–1998 crop year, the CWB held its second annual ''Moving Up Market'' conference. At this conference, the livestock feeding industry was one area of focus. Brochures from the conference and copies of the presentations given by two CWB officials and a private sector representative from the hog industry were collected on verification. Included in the presentation by the Chief Commissioner of the CWB were the following statements:

> The government in this province [Alberta] is encouraging the processing of raw products into fully processed consumer goods to capture the value which is added by processing rather than simply exporting bulk agricultural goods.
>
> The CWB shares the same desire to see Canadian processors using as much of Prairie farmers' cereal grains as possible * * *.
>
> The western Canadian livestock feeding industry secures virtually all of its feed grain requirements from Prairie farmers. In an open and competitive environment, this huge and growing market for feed grains may eventually make the export of feed barley from western Canada a thing of the past.

(*See* verification exhibit CWB–14.)

These statements indicate, at a minimum, that the CWB supports a policy of increased domestic value-added for barley grown on the prairies.

With respect to the CWB pooling mechanism, one CWB-commissioned study notes that if prices in the export markets suddenly rise, the PRO/EPRs, which are estimates of the average price to be received by the CWB throughout the year, will not rise commensurately. (*See The CWB and Barley Marketing* by Schmitz, *et al.*, in verification exhibit CWB–7.) As a result, farmers, who might otherwise attempt to take advantage of the higher prices, might not offer their barley to the CWB to be sold in the export market. Under these circumstances, the impact on the market would be the same as an overt export restriction: more feed barley will be supplied to the domestic market and domestic feed barley prices will be potentially lower.

In general, some economists maintain that the heavily regulated nature of the Canadian marketing system for grain has slowed productivity in grain handling, increased marketing costs and reduced farm returns. They argue that the CWB does not pursue improvements in the marketing and handling system the same way that private entities would in response to market forces. (*See*, for example, Carter and Loyns, *The Economics of Single Desk Selling of Western Canadian Grain*, attached as Exhibit 5k, to the R-Calf petition.) A 1995 study by KPMG Management Consulting estimated that up to twenty percent of operational costs could be saved annually through reduced regulation, the introduction of transparent incentives, and improved accountability (*See Rapid Grain Flow-Transfoming Grain Logistics* prepared for the Western Grain Elevator Association, April 1995). If unnecessary or additional costs are imposed on the farmer when he seeks to export, the impact on the market would be the same as an overt export restriction: more feed barley will be supplied to the domestic market and domestic feed barley prices will be potentially lower.

Some economists also argue that the ''selection rate'' for malting barley is lower in Canada relative to other countries. (The ''selection rate'' is the percentage of malting barley that is actually sold as malting barley; malting barley not selected for malting is sold as feed barely.) As a result, more barley grown as malting barley is sold as feed barley in both the domestic and export markets. (*See*, for example, D. Demcey Johnson, *Single Desk Selling of Canadian Barley*, in the petitioner's July 29,1999 submission at Exhibit 6.) Arguably, this scenario might also depress feed prices in the domestic market. The CWB argues that the determination of what qualifies as malting barley is made by private entities and other public entities of the Canadian government. However, while the record indicates that the CWB is not directly involved in the selection of malting barley, the CWB does seek to ensure that barley it sells as feed barley is not re-sold in another market as malting barley.

Pricing Analysis

To determine if the operations of the CWB have provided a benefit to the producers of live cattle in Canada during the POI, we made numerous price comparisons between Canadian domestic prices, several U.S. domestic prices (some of which are representative of the largest feed barley consumer markets in the world), and the CWB export price to the United States. Specifically, the benchmark prices we used were the prices in Portland, an average price in the U.S. based on several different price series, and CWB export prices to the United States. We did not make any adjustments to the reported prices other than freight, where appropriate.

First, we compared the domestic and export marketing options that would be available to a barley farmer in Saskatoon, Saskatchewan in an open market. We used a farmer in Saskatoon as representative of Canadian barley farmers because Saskatoon is located in the center of the Canadian barley growing area and because the best data we have for freight adjustments pertain to Saskatoon. We compared domestic and export opportunities, as represented by Lethbridge and Portland, respectively. We used Portland prices because these prices are representative of export prices to large, traditional global consumers of feed barley (*e.g.*, Saudi Arabia and Japan) (*see* September 22, 1999, Memorandum to File, ''Portland and Pacific Northwest (PNW) prices'').

We adjusted both the domestic and export prices back to Saskatoon by freight (rail freight for export, truck freight for domestic). *See* October 12, 1999, Memorandum to Susan Kuhbach, ''Pricing Analysis for the Canadian Wheat Board (CWB) for the Final Determination'' (''CWB Analysis Memorandum'') and Final Calculations. We observed that, during the POI the export prices in Portland were similar to those in Lethbridge. Although Lethbridge prices have been lower historically, especially in the 1995–1996 crop year, there is no consistent pattern of the Portland prices significantly exceeding the Canadian price. Beginning in November 1997, the Canadian domestic price has been higher.

Second, we compared the CWB export price to the U.S. with the domestic price in Lethbridge. We observed the same price relationships described above during the POI and the prior two years.

Third, we compared the weighted average price in the designated area with the average price of barley in the United States during the POI without making any adjustments for freight. To calculate the designated area price, we took various Canadian ''Off-Board'' prices in the designated area (Lethbridge, Calgary, Saskatoon, Melfort and Winnipeg) and weighted them by cattle production in the different areas. We used cattle production as a proxy for barley consumption because the majority of barley consumed in Canada is consumed by cattle. For U.S. prices, we calculated a simple average of prices for feed barley at various locations (Duluth, Bottineau, Cando, Churchs Ferry, Rugby, Stanley, Great Falls, Golden Triangle, Northcentral, and Portland). We used all U.S. pricing points on the record except Minneapolis, East Coast (Norfolk Terminal) and PNW. We did not include the Minneapolis price series as those prices are for malting barley. East Coast prices were omitted because no data is reported for most months during the POI. We did not have sufficient information to weight average the U.S. prices by consumption. We observed that, during the POI, the average price in the U.S. was usually lower than the average price in the designated area.

Finally, we compared an average price in the two primary growing areas in Canada with geographically comparable growing areas in the United States which are approximately the same distance from export ports. Specifically, we compared an average price in Alberta with an average price in Montana, and an average price in Saskatchewan with an average price in North Dakota. In both of these comparisons, we observed that, during the POI (the only period for which we have all the needed data), the Canadian price was often higher than the U.S. price.

Thus, based on the above price comparisons, we determine that the operations of the CWB did not provide a benefit to the producers of live cattle during the POI. Therefore, we determine that the operations of the CWB during the POI did not provide an indirect countervailable subsidy.

Provision of Goods or Services

B. Saskatchewan Pasture Program

The Saskatchewan Pasture Program has been in place since 1922. It is designed to provide supplemental grazing to Saskatchewan livestock producers and to maintain grazing and other fragile lands in permanent cover to promote soil stability. Saskatchewan Agriculture and Food operates 56 provincial community pastures encompassing 804,000 acres. At these pastures, the SAF offers grazing, breeding, and health services for fees established by SAF. Fees are based upon recovery of the costs associated with the grazing and breeding services of each pasture.

The provision of a good or service is a financial contribution as described in section 771(5)(D)(iii) of the Act. As discussed above in connection with the PFRA, a benefit is conferred in the provision of a good or service when the prices charged for government-provided goods or services are less than the prices charged by private suppliers. In the case of the Saskatchewan Pasture Program, a simple comparison of the fees charged would not be appropriate because the pasture services being offered by the SAF differ from those offered by private providers. In this regard, the GOS has provided a quantifiable adjustment. Specifically, we adjusted the private price downward by deducting costs associated with the timing of the sale of cull cows. Although the GOS argued that there were other differences that should be taken into account for such things as commingling, pasture condition, delivery and pickup periods, we have not made adjustments for such costs because either the GOS did not establish that such costs were faced solely by public pasture patrons or because the GOS was unable to quantify them.

Comparing the public pasturing price to the adjusted private pasturing price, we determine that the price for private pastures is lower than the price for public pastures. Therefore, we determine that the government is adequately remunerated for its provision of pasture services. Thus, no countervailable subsidy exists.

C. Alberta Grazing Reserve Program

Like the federal government's PFRA Community Pasture Program, Alberta developed community pastures (reserves) on which multiple ranchers' herds can graze. Grazing reserves also provided multiple-use opportunities to other users.

Traditionally, government employees supervised and managed the animals on the reserves, and maintained and built range infrastructure. However, as of April 1, 1999, the GOA ceased to perform management activities on 32 of its 37 grazing reserves as a result of a privatization initiative. Under the privatization initiative, livestock management responsibilities were shifted to grazing associations and new, negotiated fees have been established. However, during the POI, the government operated 20 reserves, accounting for approximately 170,000 AUMs. The 17 remaining reserves were privately operated and accounted for approximately 150,000 AUMs.

Priority in issuing permits for use of the reserves is given to residents who operate a ranch or farm. The Minister of Lands and Forests establishes the amount to be paid for stock grazing on each pasture operated by the GOA. The GOA reported that the grazing revenues obtained from this program exceed the cost of the grazing aspects of the program and cover many of the multiple-use functions of the land.

The provision of a good or service is a financial contribution as described in section 771(5)(D)(iii) of the Act. As discussed above in connection with the PFRA, a benefit is conferred in the provision of a good or service when the

prices charged for government-provided goods or services are less than the prices charged by private suppliers. In the case of the Alberta Grazing Reserve Program, we determine that the government is charging more than the private providers of the same services. Specifically, the fees charged by the private grazing associations to its members were lower than those charged by the government. Based on the above, we determine that the government is receiving adequate remuneration for its provision of grazing services. Thus, no countervailable subsidy exists.

We also examined whether the amount charged by the GOA to the private grazing associations for the reserves they operate provided adequate remuneration tot he GOA. We found that the fee charged is comparable to the adjusted private grazing lease price discussed under the ''Alberta Crown Lands Basic Grazing Program'' section above. Therefore, we determine that the government is being adequately remunerated for its provision of grazing land to grazing associations. Thus, no countervailable subsidy exists.

Green Box Programs

Under section 771(5B)(F) of the Act, domestic support measures provided with respect to the agricultural products listed in Annex 1 to the 1994 WTO Agreement on Agriculture (''Agriculture Agreement'') shall be treated as noncountervailable if the Department determines that the measures conform fully with the provisions of Annex 2 of the Agriculture Agreement. Our *New CVD Regulations* further state that we will determine that a particular domestic support measure conforms fully to the green box criteria in the Agriculture Agreement if we find that the measure (1) is provided through a publicly-funded program (including government revenue forgone) not involving transfers from consumers; (2) does not have the effect of providing price support to producers; and (3) meets the relevant policy-specific criteria and conditions laid out in Annex 2 of the Agriculture Agreement. As was noted above in the *Applicable Statute and Regulations* section, although Subpart E of 19 CFR Part 351 of our *New CVD Regulations* does not apply to this investigation, Subpart E represents the Department's interpretation of the requirements of the Act and is, thus, referenced here.

The GOC requested ''green box'' treatment for three programs in this investigation: The Canada-Alberta Beef Industry Development Fund (''CABIDF''), the Feed Freight Assistance Adjustment Fund (''FFAF''), and the Saskatchewan Beef Development Fund (''SBDF''). Because the FFAF was not used during the POI, we do not reach the issue of green box treatment for FFAF. *See* the *Programs Preliminarily Determined To Be Not Used* section, below. The claims made relating to CABIDF and SBDF are discussed in detail below. A more detailed discussion of the Department's analysis of this issue can be found in the Department's Memorandum to Richard Moreland: ''Green Box Claims Made by the Government of Canada,'' dated May 3, 1999, which is on file in the Central Records Unit.

D. Canada-Alberta Beef Industry Development Fund

CABIDF, which was established by the GOC and the GOA in April 1997, supports research, development, and related activities connected to the beef industry in Alberta. It is administered by the Alberta Department of Agriculture, Food, and Rural Development and run by the Alberta Cattle Commission and the Alberta Agricultural Research Institute. To receive funding through this program, applicants must submit a series of research proposals that are evaluated on the basis of the project's relationship to the Funds's research priorities (which are discussed in the *Preliminary Determination*), its scientific merits, and the usefulness of the project results to the beef industry, directly or indirectly. Final proposals are evaluated for technical merit by a scientific committee consisting of industry experts and scientists, and are then approved or rejected based on these evaluations by CABIDF's governing committee.

In order to determine whether CABIDF qualifies for green box treatment under section 771(5B)(F) of the Act, we examined whether CABIDF met the criteria specified in the Act and further detailed in the Agriculture Agreement. With regard to the first criterion noted above, in the original and supplemental questionnaire responses, the GOC and the GOA stated that all monies used to fund this program came directly from the government, whether on a provincial or on a federal level. We verified that no funds for this program were received from any entity other than federal and provincial governments during the POI. The funds went directly to CABIDF applicants. No transfers from consumers were involved.

As for the second criterion, none of the projects that have been approved by CABIDF have the effect of providing price support to producers.

With regard to the last criterion, the policy-specific criteria that must be met in this case are those listed under paragraph 2, Annex 2 of the Agriculture Agreement. Paragraph 2 focuses on policies that provide services or benefits to the agriculture or rural community. It includes sub-paragraph (a), which covers projects for research, including general research, research in connection with environmental programs, and research programs relating to particular products (sub-paragraph (a)).

According to its authorizing statute, the purpose of CABIDF is to ''provide financial contributions in the form of grants to enhance research and industry development activities with the objective of promoting and enhancing the competitiveness of the beef industry in Alberta.'' Officials confirmed that each project approved through CABIDF is approved solely because of its potential scientific research value to the Alberta beef industry, and that projects approved are all research-related projects. We verified that all of the projects that have been funded by CABIDF since the program's inception in April 1997 have been related to scientific research activities for the beef industry and the agriculture industry in general. All of the approved projects consisted of grants, not revenue forgone, and we verified that none were paid directly to producers or processors.

Based on our analysis, we find that CABIDF is eligible for green box treatment under section 771(5B)(F) of the Act, and, thus, is not countervailable.

E. Saskatchewan Beef Development Fund

SBDF, which is administered by the Agriculture Research Branch of the Saskatchewan Ministry of Agriculture and Food, supports the development and diversification of Saskatchewan's beef industry through the funding of various projects related to production research, technology transfer, and development and promotion of new products. The ministry-appointed, producer-run governing board, the Saskatchewan Beef Development Board, meets once a year to review and approve project proposals that it deems to be of general benefit to the cattle and beef industries. Priority is given to public research institutions conducting research, development, and promotion activities that will be generally available to the industry.

In order to determine whether SBDF qualifies for green box treatment under section 771(5B)(F) of the Act, we examined whether the SBDF met the criteria specified in the Act and further

laid out in the Agriculture Agreement, which were described in detail above. With regard to the first criterion, in the original and supplemental questionnaire responses, the GOS reported that all monies used to fund this program came directly from the provincial government. We verified that no funds for this program were received from any non-public entity during the POI. The funds went directly to SBDF applicants. No transfers from consumers were involved.

As for the second criterion, none of the projects that have been approved by SBDF have the effect of providing price support to producers.

Finally, with regard to the last criterion, the policy-specific criteria that must be met in this case are also those which are listed under paragraph 2, Annex 2 of the Agriculture Agreement. In particular, the relevant criteria are contained in sub-paragraphs (a), (c), (d), and (f) of paragraph 2, which focus on programs relating to research, training services, extension and advisory services, and marketing and promotion services.

The regulations governing SBDF state that the purpose of the program is to provide for the enhancement of the Saskatchewan beef and beef cattle industry through research, development, and promotional activities that the board considers to be in the best interests of the industry. We verified that each of the thirteen projects that received funding distributions through the SBDF during the POI was either a research or an extension and advisory program. All of the approved projects consisted of grants, not revenue forgone, and we confirmed that none were paid directly to producers or processors.

Based on our analysis, we find that SBDF is eligible for green box treatment under section 771(5B)(F) of the Act and, thus, is not countervailable.

Other Programs

F. Net Income Stabilization Account

The Net Income Stabilization Account (''NISA'') is designed to stabilize an individual farm's overall financial performance through a voluntary savings plan. Participants enroll all eligible commodities grown on the farm. Farmers may then deposit a portion of the proceeds from their sales of eligible NISA commodities (up to three percent of net eligible sales) into individual savings accounts, receive matching government deposits, and make additional, non-matchable deposits, up to 20 percent of net sales. The matching deposits come from both the federal and provincial governments.

NISA provides stabilization assistance on a ''whole farm'' basis. This means that a farmer's eligibility to receive assistance depends on total farm profits, not the profits earned on individual commodities. A producer can withdraw funds from a NISA account under a stabilization or minimum income trigger. The stabilization trigger permits withdrawal when the gross profit margin from the entire farming operation falls below an historical average, based on the previous five years. If poor market performance of some products is offset by increased revenues from others, no withdrawal is triggered. The minimum income trigger permits the producer to withdraw the amount by which income from the farm falls short of a specific minimum income level.

In *Live Swine From Canada; Final Results of Changed Circumstances Countervailing Duty Administrative Review, and Partial Revocation*, 61 FR 45402 (August 29, 1996), we found that NISA is not *de jure* specific. Moreover, for hog producers, we found that NISA was not *de facto* specific. Therefore, the issue in this investigation is whether NISA is *de facto* specific with respect to cattle producers.

To make our determination, we have examined whether cattle producers are dominant users of the program, or whether cattle producers receive disproportionately large benefits under the program. We found no evidence that cattle producers are dominant users or receive disproportionate benefits from the NISA program. Specifically, the GOC provided information on farmer withdrawals of NISA funds during the POI and the two preceding years. Because NISA does not collect or maintain information concerning withdrawals on a commodity-by-commodity basis, the GOC reported farmer withdrawals by categorizing farms by the source of the majority of their revenues. That is, a farm with over fifty percent of its revenues from a particular commodity's sale, such as cattle, was classified as a farm of that commodity. On this basis the GOC reported that, during the POI, cattle farms accounted for 7.7 percent by value of total withdrawals from NISA.

We have also analyzed whether NISA is regionally specific because certain commodities, including cattle, in certain provinces are not eligible commodities under the program. In that regard, we determine that NISA is not limited to a particular region. While certain commodities are not eligible for matching funds within certain provinces, the producers of these commodities elect not to participate at their own choice, not because the program is limited to an enterprise or industry located in a particular region.

Based on the above analysis, we determine that NISA assistance is not limited to a specific enterprise or industry, or group of enterprises or industries. Therefore, we determine that assistance received by cattle producers under the NISA program is not countervailable.

G. Alberta Public Grazing Lands Improvement Program

Established in 1970 and terminated in 1995, this program provided a partial credit toward the payment of rent on a public grazing land disposition if the lessee undertook certain pre-approved capital range improvement projects. The leaseholder was required to pay for all the costs incurred for these capital improvements, and was reimbursed for 25 to 50 percent of these costs through credits on the rental fees otherwise due annually. All improvements belong to the government and, once the improvements are created, the lessee is required to maintain them at his or her own expense.

In order for a financial contribution to exist under this program, the GOA must forego rental fees, or a portion thereof, that are otherwise due as described in section 771(5)(D)(ii) of the Act. However, in this case the reduction in the rental fees corresponds to range improvements on behalf of the government. Furthermore, the increased value of the land as a result of the improvements is captured upon the next setting of rental fees. Based on the above analysis, we determine that this program does not provide a financial contribution and, therefore, we determine that the program is not countervailable.

H. Saskatchewan Crown Land Improvement Policy

The Crown Land Improvement Policy is designed to provide rental adjustments when Crown land lease holders make capital improvements to the land, such as clearing, bush removal, or breaking and reseeding. In return for the lessee's funding of these improvements, Saskatchewan Agriculture and Food (''SAF'') agrees not to increase the rental rate for a certain period of time, depending on the length of the improvement project or may reduce the basis for rent. SAF is willing to reduce the rental rate or freeze the rate because during the improvement project the actual stocking rate of the land is lower than the potential, the improvements do not result in an immediate increase in the

productive value of the land, and any improvements belong to the Crown.

In order for a financial contribution to exist under this program the GOS must forego rental fees, or a portion thereof, that are otherwise due as described in section 771(5)(D)(ii) of the Act. However, in this case the reduction in the rental fees corresponds to a reduction in the land's carrying capacity while improvements are undertaken. The increased value of the land as a result of the improvements is captured upon the next setting of rental fees. Based on the above analysis, we determine that this program does not provide a financial contribution and, therefore, we determine that the program is not countervailable.

I. Saskatchewan Breeder Associations Loan Guarantee Program

The Saskatchewan Breeder Associations Loan Guarantee Program was established in 1991 to facilitate the establishment of cattle breeder associations, in an effort to promote cattle breeding in Saskatchewan. The program is administered by the Livestock and Veterinary Operations Branch of the Saskatchewan Agriculture and Food Department. This agency provides a guarantee on 25 percent of the principal amount of loans to breeder associations for the purchase of certain breeding cattle. Eligibility is limited to breeder associations which consist of at least twenty individuals who are residents of Saskatchewan and over the age of eighteen. One hundred and seven associations received guarantees on loans which were outstanding during the POI.

Breeding livestock is not covered by the order of this investigation. Therefore, we determine that this program does not provide a countervailable subsidy to the subject merchandise because any potential subsidy would benefit merchandise other than that covered by this investigation.

III. Programs Determined To Be Not Used

Based upon the information provided in the responses, we determine that the producers of the subject merchandise under investigation did not apply for or receive benefits under the following programs during the POI.

A. Feed Freight Assistance Adjustment Fund

Of the four responding provinces in this investigation, only one, Ontario, participated in the Feed Freight Assistance Adjustment Fund program. Specifically, in the year prior to the POI, the first year of the FFAF, a grant was provided to Ontario producers. However, because the benefit was below 0.5 percent of the investigated provinces' total sales, we expensed this grant in the year received. Thus, cattle producers received no benefit during the POI from grants received prior to the POI. We verified that, during the POI, Ontario did not receive benefits under FFAF. Therefore, we determine that the FFAF program was not used during the POI.

B. Canadian Adaptation and Rural Development (CARDS) Program in Saskatchewan

C. Western Diversification Program

IV. Programs Determined To Be Terminated

A. Ontario Export Sales Aid Program

V. Other Programs Reviewed

The GOC demonstrated that, for the following programs, any benefit to the subject merchandise would be so small that there would be no impact on the overall subsidy rate, regardless of a determination of countervailability. In light of this, we do not consider it necessary to determine whether benefits conferred under these programs to the subject merchandise are countervailable.

A. Ontario Bear Damage to Livestock Compensation Program

B. Ontario Livestock Programs for Purebred Dairy Cattle, Beef, and Sheep Sales Assistance Policy/Swine Assistance Policy

C. Ontario Artificial Insemination of Livestock Act

Interested Party Comments

Canadian Wheat Board

Comment 1: Indirect Subsidies

The petitioner argues that, according to *Georgetown Steel Corp.* v. *United States*, 801 F.2nd 1308, 1315 (Fed. Cir. 1986), a subsidy is defined as any action that distorts or subverts the market process and results in a misallocation of resources. In determining the existence of a countervailable subsidy, according to Section 771(5)(C) of the Act, it is irrelevant whether the subsidy was provided directly or indirectly.

The petitioner further contends that the SAA and Department precedent make clear that the Department intends to countervail indirect subsidies, such as export restraints. As such, the GOC need not compel Canadian barley growers to supply the cattle industry. According to the petitioner, it is sufficient that feed barley is produced and sold only to cattle and other livestock producers. Specific end-use market control over exports, and the resulting depression of domestic prices, is sufficient to direct lower-priced feed barley to Canadian cattle producers. The provision of goods, albeit by a private party, may be countervailed when the price of those goods is the result of a government program distorting the market.

The GOC argues that the URAA added a definition of ''countervailable subsidy'' to U.S. law which requires that a ''financial contribution'' and a resulting benefit be conferred before a ''subsidy'' can be said to exist. Further, a financial contribution may be only one of four specifically enumerated forms of government action, including the ''provision of goods,'' which is the allegation in this case. This requirement may result from private action in situations in which the government ''entrusts or directs a private entity to make a financial contribution'' such as the provision of goods. The GOC argues that neither the GOC nor the CWB entrusted or directed Canadian barley producers to do anything. To the contrary, barley producers have complete discretion over decisions concerning whether to offer barley to the CWB, to sell it to domestic cattle or other livestock producers, to use it as feed on one's own farm, or, for that matter, to do nothing with it at all. Indeed, according to the GOC, barley producers remain free to produce another product, or to change their line of business altogether. According to the GOC, since the CWB is neither providing goods to cattle producers nor entrusting or directing any private entity to do so, no financial contribution exists in this instance and, thus, no subsidy.

Department's Position: It is our position that indirect subsidies, such as export restraints, are potentially countervailable. In the preamble of the *New CVD Regulations*, we stated that while export restraints ''may be imposed to limit parties'' ability to export, they can also, in certain circumstances, lead those parties to provide the restrained good to domestic purchasers for less than adequate remuneration'' (at 65351). Thus, the provision of a good, whether provided directly or indirectly, for less than adequate remuneration constitutes a financial contribution under section 771(5)(D) of the Act. In this case, although we have found no benefit during the POI, record evidence indicates that the CWB is not immune to the interests of cattle producers in its policy determinations.

Comment 2: CWB Control, Inefficiency, and Market Distortions

The petitioner states that the CWB is legally and operationally in a position to control the barley market, restrain exports, oversupply the domestic market, and thereby reduce the costs incurred by Canadian cattlemen. The petitioner argues that, whether or not the CWB's control amounts to a direct and utter restriction on exports, the Canadian marketing and handling system, of which the CWB is a key institution, prevents exports which otherwise would have occurred because it creates a disincentive for Canadian barley farmers to offer feed barley for export.

Specifically, the petitioner suggests that the CWB system creates inefficiencies and increased marketing costs, which causes less barley to be exported than would be in the absence of the CWB. The petitioner provides economic studies which show that the CWB's control limits the ability of the Canadian market to arbitrage with export markets. The petitioner further argues that theory and empirical evidence show that the CWB's control of exports lowers domestic feed barley prices.

The petitioner argues that the ''direct and discernible effect'' on prices caused by the CWB's control is that export price signals to barley farmers (the PROs and EPRs) are distorted. Thus, because barley producers perceive export demand to be at price levels far below actual export prices, less barley is offered to the CWB and more is available on the domestic market at lower prices. The effect of the CWB barley export control is made evident in the long-term, substantial disparity between domestic and export prices. The petitioner further argues that this price differential was not affected by the cessation of rail freight subsidies and that the effects of U.S. Export Enhancement Program (EEP) and E.U. subsidies are independent from the question whether the CWB's restraints on exports have distorted barley prices in Canada.

The GOC states that the CWB system itself does not create a disincentive to offer barley as the petitioner alleges. Regarding the argument that the CWB system is inefficient, the GOC points to other studies on the record that refute this conclusion. The GOC also points to the fact that the allegedly inflated distribution costs that lead to inefficiencies relate to activities outside of the CWB's jurisdiction. Nonetheless, the GOC claims, any effect of an alleged inefficiency cannot be equated with an export restriction and cannot give rise to a subsidy.

The GOC further states that record evidence shows that PROs and EPRs do, in fact, provide adequate pricing signals to barley farmers. There is nothing on the record to suggest that the pricing signals during the POI did not reflect the market realities in export markets. Furthermore, any alleged price differentials are caused by the removal of freight subsidies and U.S. EEP and E.U. subsidies, distortions which are outside of the CWB's control, according to the GOC.

Department's Position: As discussed above, we agree that certain aspects of the CWB system can be market-distorting and can have the same result as an overt export restraint. For example, Canadian barley farmers are not able to respond to sudden increases in export prices because of the rigidity of the CWB's pricing system for barley. Regarding the alleged inefficiency of the system arising from increased marketing costs, the evidence on the record is not necessarily conclusive. Nonetheless, as described in the CWB section above, we did not find significant price differentials between prices inside the designated area and U.S. prices, some of which reflect prices to the major consumers of feed barley in world markets. Thus, we determine that Canadian cattlemen did not receive a benefit during the POI.

Comment 3: Canadian Barley Producers as a Private Entity

The GOC states that Canadian barley producers cannot qualify as a ''private entity'' under any normal meaning of the term. Thus, the Department cannot conclude that they were ''entrusted or directed'' to provide an indirect subsidy.

The petitioner states that both *Lumber* and *Leather*, as well as Department practice, have shown that the term ''private entity'' is and has been interpreted to encompass inducement of more than one private entity.

Department's Position: Although we have found that the CWB system did not provide a benefit to Canadian cattlemen during the POI, we believe that barley farmers may be considered a private entity. We further note that both the SAA (at 926) and the preamble to the *New CVD Regulations* (at 65350) make clear that the Department considers the phrase ''private entity'' to include groups of entities or persons.

Comment 4: Cross-Border Comparisons

The petitioner states that the Department erred in its preliminary analysis of prices by relying on a comparison of Canadian domestic prices to only U.S. interior prices in Great Falls. According to the petitioner, a rational exporter would not ship to Great Falls, which is a surplus barley area, but would seek out the highest export prices (*i.e.*, the U.S. PNW/Portland, Saudi Arabia or Japan). Moreover, in prior cases such as *Lumber*, the Department has relied on prices from the most important export markets for comparison purposes. Without this type of cross-border comparison, the petitioner argues, it would be impossible to measure benefits conferred on the domestic industry.

The GOC argues that cross-border comparisons should not be used at all in this analysis. Any analysis should be made by looking at prevailing market conditions for the good or service being provided in the country subject to the investigation, Canada. The proper inquiry is the price cattlemen would otherwise pay in Canada, not alternate markets.

Department's Position: We agree with the petitioner that a comparison of only Great Falls and Canadian domestic prices does not necessarily answer the question of whether domestic feed barley prices in Canada are lower than prices outside of Canada. A thorough analysis should also account for other U.S. and world market prices. As described in the CWB section above, we made several price comparisons, some of which are similar to those suggested by the petitioner, and found no price differential.

We disagree with the GOC that cross-border comparisons are inappropriate to test whether Canadian domestic feed barley prices are artificially low. When confronted with an adequate remuneration issue, the Department will normally seek to measure the adequacy of remuneration by comparing the government price to market-determined prices within the country. However, in certain circumstances, market prices may not exist in the country or it may be difficult to find a ''market'' price that is independent of market distortions caused by government action. With respect to export restriction programs in particular, international prices are not necessarily the benchmarks we use to determine if a benefit exists; in such cases, international prices are merely the starting point of our analysis. See *Lumber*.

The only domestic barley prices on the record that may be independent of the CWB's influence are prices for barley grown in Ontario. However, we verified that the Ontario barley market is very different from that in the

designated area because the barley market in Ontario is very thin and is subject to significant price fluctuations. Additionally, to the extent that cattle are raised in Ontario, they are primarily fed corn rather than barley. Thus, we do not believe Ontario provides a reliable comparison price.

Because there is not an appropriate market price within Canada, we used other prices against which to compare barley prices in the designated area. Given that these price comparisons did not yield significant, consistent price differentials through the POI, further analysis of whether Canadian domestic feed barley prices are lower than they would be absent the CWB is unnecessary.

Comment 5: The CWB's Producer Direct Sales (''PDS'') Program

The petitioner argues that the PDS program eliminates any economic or rational incentive to export unless the exporter can obtain an export price that is substantially higher than the Canadian domestic price and the PDS price. Thus, it acts as a substantial restraint on exports.

The GOC argues that the PDS program is a safety valve for producers to allow them to pursue higher returns that they find through export spot opportunities. Furthermore, the CWB actively assists producers in pursuing this option.

Department's Position: Based on our analysis, the PDS program does not encourage farmers to export independently. In theory, the PDS program allows barley farmers to export for their own account. However, as a practical matter, in order to benefit from the PDS program, farmers essentially have to find extraordinary sales opportunities because the PDS price is set relatively high and consistently higher than the CWB pool return. Thus, it is unlikely that a barley farmer would be able to find sales opportunities sufficiently attractive to make the PDS program a worthwhile endeavor. Nevertheless, as noted above, we have concluded that, even assuming a restraint on exports, the operations of the CWB did not provide a benefit to Canadian cattlemen during the POI.

Comment 6: Freight Adjustments

The GOC states that any comparisons of barley prices must account for freight. Although the petitioner did attempt to make a freight adjustment in a few of its price comparisons, the adjustments were ''absurdly low'' and, after proper adjustments for freight are made, the price differentials alleged by the petitioner disappear.

The petitioner provides several price comparisons which show a significant, long-term price differential between prices in the designated area and prices in export markets. In a few of these comparisons, the petitioner made an adjustment for freight based upon freight costs from Calgary to Vancouver. According to the petitioner, even after one accounts for freight, there is still a significant price differential.

Department's Position: Freight is a key element in the price of Canadian feed barley; all feed barley prices throughout the designated area track the price in Lethbridge. To reflect this market reality, for example, feed barley futures contracts traded on the Winnipeg Commodity Exchange are designed with ''regional discounts'' which account for the location of barley and the cost of shipping that barley to Lethbridge (as well as local supply and demand factors). *See* CWB Verification Report at 16. Therefore, any comparison of prices at different geographic locations must account for freight costs.

Although the petitioner adjusted an average price in the designated area for freight, the adjustments did not adequately reflect the real cost of transporting grain grown throughout the designated area to Vancouver. Specifically, the petitioner used the freight rate from Calgary to Vancouver to adjust an average price based on prices throughout the designated area. The train route from Calgary to Vancouver is shorter than all other points in the designated area and, therefore, freight costs from this point are likely to be lower than everywhere else. Record evidence shows that freight costs to Vancouver from other points in the designated area can be substantially more than the cost of freight from Calgary.

Therefore, in making our point-to-point price comparisons, we made freight adjustments which corresponded with the specific location of the barley price used in the comparison (*i.e.,* Saskatoon or Lethbridge). After adjusting for freight in our point-to-point comparisons, we found no consistent pattern of price differentials when comparing the prices of feed barley sold in the designated area and the prices of feed barley outside of Canada.

Comment 7: Export Price Benchmarks

The petitioner argues that the Department should use several pricing series to represent export prices: (1) Canadian export statistics, (2) U.S. Portland and PNW prices, (3) PDS prices, and (4) U.S. import statistics. With respect to Canadian export statistics, the petitioner first notes that Canadian ''exports'' to the U.S. are in fact U.S. import statistics prepared by the U.S. Census Bureau and argues that the Department should not disregard the U.S. import data as it did in the *Preliminary Determination* in calculating Canadian export prices to the U.S. Furthermore, the petitioner argues that this data provides a better basis for computing overall available export opportunities than the actual transaction data reported by the CWB by virtue of the additional charges incurred by the CWB on the transaction data and because any reporting errors in the U.S. import data due to freight would be minor.

The petitioner further suggests that U.S. prices in Portland or the PNW should be used over prices in Great Falls (as was done in the *Preliminary Determination*) because, as stated in comment 4 above, a rational exporter would not ship to Great Falls, but to the market that provides the highest price. Moreover, according to the petitioner, record evidence indicates that Portland prices may be indicative of the best export opportunity available.

Finally, the petitioner suggests that PDS prices could be used as an export price because the PDS prices represent the best determination of the CWB as to its own export opportunity price. In addition, the petitioner states that because PDS prices are posted daily at all elevators, they are not affected by freight charges and, thus, do not need to be adjusted for freight costs.

The GOC argues that each of the petitioner's export price suggestions suffers from numerous factual and legal shortcomings. First, the Canadian export statistics and U.S. import statistics are unreliable because they reflect shipments, not sales, and thus cannot be compared with Canadian domestic sales prices. Moreover, as established at verification, some values reported in the U.S. import statistics do, in fact, include freight. Second, there is no evidence on the record to suggest that Portland or PNW prices are the prices that Canadian cattlemen would pay in the absence of the CWB. Moreover, when proper freight adjustments are made to this price series, the differential disappears. Third, PDS prices do not reflect conditions in Canada or the price that Canadian cattlemen would pay, and there is no evidence that significant quantities of barley could be sold at PDS prices. In addition, the petitioner is incorrect in stating that PDS prices would not need to be adjusted for freight because they are posted at all elevators. PDS prices are based in Vancouver and St. Lawrence and, thus,

would have to be adjusted for freight when comparing them to prices within the designated area. Fourth, with respect to U.S. import statistics, it is not reasonable to assert that these statistics are more reliable than actual CWB transaction data, especially in light of the known deficiencies with the U.S. data.

Department's Position: As described in the CWB section above, we made several price comparisons. In doing so, we used prices from a variety of sources (including the petitioner's second suggestion to use Portland prices), making appropriate adjustments for freight when necessary. For further discussion of the prices selected for our comparisons, see CWB Analysis Memorandum.

With respect to PDS prices, although they are posted at every elevator throughout the designated area, PDS prices are based in Vancouver or St. Lawrence and the amount a farmer would have to pay to ''repurchase'' his barley from the pool would be net of freight from that location to either Vancouver or St. Lawrence. Thus, to compare accurately PDS prices with prices in the designated area, PDS prices need to be adjusted for freight. We note that if one were to employ the petitioner's suggestion and compare PDS prices to designated area prices, after adjusting for freight, there is not a consistent price differential. *See* Final Calculations.

With respect to the petitioner's first and fourth pricing suggestions, the evidence on the record makes clear that there are problems with both the Canadian export statistics and U.S. import statistics. For example, the import/export statistics reflect shipments, not sales, and thus, cannot reliably be compared with domestic sales prices. In addition, the Canadian export statistics to Japan include values for both feed and malting barley. We further note that although the export/import statistics are reported f.o.b. at the port, the particular port is unknown so there is no means to adjust those figures precisely for freight to make an appropriate comparison with domestic prices.

Furthermore, we determine that the actual CWB export sale transactions to the U.S. that we verified are more reliable than prices derived from secondary sources such as U.S. import statistics. We conducted a thorough verification of the CWB's export sales and confirmed that all prices were reported accurately and that all freight adjustments were reasonable. In addition, record evidence demonstrates that, in certain instances, freight is improperly included in the values reported in the U.S. statistics. For these reasons, we did not rely on derived prices from the volume and value figures reported in the export/import statistics.

Comment 8: Use of Actual Versus Bid or Offer Prices

The petitioner suggests that, in determining the proper domestic pricing series to use for comparison purposes, the Department should rely on pricing series based on ''bid'' or ''offer'' prices as well as pricing series that measure actual transactions. (''Bid'' prices are the prices at which elevators are willing to purchase barley from the producer; ''offer'' prices are the prices at which the elevator is willing to sell (or offer) barley to consumers. The difference between bid and offer prices is the elevator margin.) Moreover, the Department should not exclude particular pricing series on the grounds that they include elevation charges. According to the petitioner, if there is a high level of competition among elevators, some may absorb elevation charges and others may not. Since there is no means to adjust for these differentials, there would be no reason to exclude certain price series that are based on commercial elevator offer prices.

The GOC, while it does not object to the use of pricing series based on bids or offers, believes that the other pricing series, especially those based on cash or transaction prices, are equally or more reliable and should not be discarded in favor of bid or offer prices.

Department's Position: We have used both price series based on actual transactions and those based on bid or offer prices in our calculations to determine a domestic price for comparison purposes. Further, we agree with the petitioner that there is no means on the record to adjust precisely for elevation charges. *See* CWB Analysis Memorandum.

Comment 9: Reliance on Lethbridge as a Domestic Pricing Point

The petitioner states that the Department should not rely too heavily on Lethbridge prices in calculating Canadian domestic prices for the final determination. The petitioner argues that, since Lethbridge is a net import market for barley, Lethbridge prices would be indicative of the high-water mark, not of overall price levels in the designated area.

The GOC argues that, since barley transactions are carried out by private barley producers and not by the GOC, there is no real ''government barley price'' in Canada to which any comparison can be done. However, if prevailing prices in the designated area are construed as a government price, Lethbridge prices are the most obvious to use as a domestic point since Lethbridge is the point in Western Canada from which all other feed barley is priced.

Department's Position: Although we agree with the petitioner that we should not rely exclusively on Lethbridge prices as the measure of the domestic prices for barley in Canada, we agree with the GOC that Lethbridge is an important pricing point in the designated area. Therefore, we have used, but not relied exclusively upon, Lethbridge prices in our various comparisons.

As discussed in the CWB section above, in the first comparison, we adjusted the Lethbridge price downward to account for truck freight from Saskatoon. In the second comparison, we relied entirely on Lethbridge because certain CWB export sales were reported only on a Lethbridge basis, which made Lethbridge the only useable Canadian comparison price. In the third and fourth comparisons, we combined the Lethbridge price with other Canadian prices to calculate average prices. Thus, in the last two comparisons, we accounted for barley prices throughout the designated area.

Comment 10: Prices of Western Canadian Barley Sold in Ontario

The petitioner states that an analysis of domestic prices within the designated area should not include the Ontario locations of Thunder Bay and Georgian Bay because these points are not within the designated area.

The GOC argues that, although the Ontario pricing points to which the petitioner refers are physically located outside of the designated area, prices in these locations represent prices of Western Canadian barley and can be properly included in the analysis.

Department's Position: For the final determination, we have modified the average price for the designated area to exclude Ontario prices. Although the GOC is correct in stating that Ontario prices for Thunder Bay and Georgian Bay are for barley produced in the designated area and shipped to Ontario, these prices would include freight to Ontario. Thus, the inclusion of these prices in the average designated area price that we calculated for use in one of our price comparisons would not be appropriate.

Comment 11: Use of Facts Available To Determine Export Prices to Japan

The petitioner argues that the Department should use adverse facts available when determining the export price to Japan because the CWB failed to provide pricing information that it maintains as the sole exporter of Canadian barley.

The GOC states that, to its knowledge, it has submitted information that has been satisfactory to the Department. Moreover, the GOC asserts that the information it has submitted has allowed the Department to sufficiently address the major issues at hand.

Department's Position: Although we would have preferred to obtain CWB third country pricing data, we have determined that, for the purposes of this investigation, there is sufficient pricing information on the record to make appropriate price comparisons based upon published pricing surveys at specific locations. Thus, the use of adverse facts available based upon deficient secondary sources is not warranted.

Comment 12: Countervailability of Provincial Loan Guarantee Programs

The GOA, GOS, GOM and GOO contend that their respective loan guarantee programs do not provide a countervailable benefit as defined in Section 771(5)(E)(iii) of the statute because the programs do not lower the cost of borrowing. Respondents state that the Department confirmed at verification that it is the highly structured nature and security requirements of the associations participating in the loan guarantee programs, and not the guarantees, that determine the interest rates charged to participants. Specifically, respondents argue that the guarantee is commercially insignificant when compared to other aspects of the program such as the substantial security provided to lenders by the associations, the local monitoring undertaken by each associations' staff and the branding requirements with respect to the cattle purchased by association members.

The petitioner argues that, contrary to respondents' assertion, the verification record does not establish that the loan guarantee programs are not countervailable. Absent the loan guarantee programs, individual cattle producers would be seeking to obtain loans rather than large cattle associations. These small cattle operations would face dramatically higher interest rates and stringent loan terms. This is evidenced by the Saskatchewan Agricultural Value-Added Loan Fund, where borrowers pay prime plus 4 percent. The petitioner urges the Department to use this as the benchmark for the provincial loan guarantee programs.

In the event that the Department uses information obtained from banks at verification to derive the benchmark rate, the petitioner contends that the Department should, at a minimum, apply a benchmark rate of prime plus 2.25 percent for purposes of the final determination. Petitioner asserts that this interest rate, derived from comments made by Saskatchewan commercial lenders at verification, more accurately reflects the cost of borrowing for association members than the benchmark rate used at the *Preliminary Determination*.

Department's Position: At verification, private bank officials explained that several attributes of the associations were considered in setting the interest rate on association loans. Specifically, bank officials mentioned that the administrative and managerial features of the associations provide lenders with substantial security against default. We agree that these attributes would make these loans attractive to lending institutions, even absent the guarantees. Nevertheless, the provincial governments do provide the guarantees on these loans. As discussed in the ''Programs Determined To Be Countervailable'' section, the guarantees are financial contributions and specific to cattle producers. Therefore, we have analyzed whether the guarantees confer a benefit by measuring the difference between the amount the associations pay on the guaranteed loans and the amount they would pay for a comparable commercial loan absent the guarantee.

Regarding the petitioner's claim, we disagree that we should use interest rates that would be paid by individual farmers as a benchmark for loans taken out by associations. This is because loans to individual cattle producers do not represent ''comparable commercial loans'' to loans taken out by associations. Thus, we have not incorporated the lending rates available under the Saskatchewan Agricultural Value-Added Loan Fund into our analysis. Moreover, we verified that this program does not currently exist and that cattle producers never participated in it. Consequently, loan rates established by that program are not relevant to this investigation.

Comment 13: Alberta Feeder Association Loan Guarantee

First, the GOA contends that the Department failed to take into account the marginal nature of the government guarantee. The GOA explains that the program only guarantees 15 percent of the total amount of the loan and, therefore, it is not credible for such a small guarantee to have the economic impact reflected in the Department's preliminary benchmark rate.

Second, the GOA argues that the Department should incorporate the discounted lending rates obtained by Alberta feeder associations from bank marketing efforts into its calculation of the provincial benchmark rate. The GOA notes that the identical interest rate was offered to a variety of borrowers throughout Canada during the POI and, therefore, the Department should not treat these lending arrangements as a subsidy.

Finally, the GOA contends that because the benchmark rates obtained at verification are fixed rates, the Department should adjust the floating rate feeder association loans to the equivalent fixed rate. The GOA states that the Department confirmed at verification that lenders offer borrowers a choice of fixed or variable rate loans, and that banks set the two rates so they present equivalent financial risk to the loans. Consequently, the GOA argues, the Department can adjust the variable interest rates on loans that are guaranteed to what they would be if they had been taken out as fixed rate loans and compare them to the fixed rate benchmark.

Department's Position: As discussed in the *Subsidies Valuation Information* section, we have revised the benchmark interest rate used at the *Preliminary Determination* with respect to the provincial loan guarantee programs and have calculated province-specific benchmark rates based on verified information. The Alberta benchmark rate was calculated by averaging the verified range of lending rates the associations could obtain in the market absent the government guarantee. Accordingly, the benchmark rate we derived from the information collected at verification captures the marginal nature of the guarantee. In addition, our revised benchmark included the discounted lending rates the feeder associations received from bank marketing efforts because the association membership was eligible for these rates regardless of the government guarantee.

With respect to the GOA's assertion that we should adjust variable rate association loans to the equivalent fixed rate, it is not clear from the verification record that the benchmark information we collected was expressed in terms of fixed rates only. Therefore, we have not

made an upward adjustment to the floating rate loans for our final results.

Comment 14: The Base Prime Rates Should Be Adjusted To Reflect Bank Prime Rates

The petitioner argues that the Department should upwardly adjust the prime rate used in the *Preliminary Determination* to reflect the commercial prime rate available to borrowers during the POI. Petitioner states that the Department verified that the base-lending rate used to calculate the interest charged on association loans is the bank prime rate, which is typically the Bank of Canada prime rate plus a spread of .25 percent to .5 percent. Therefore, for purposes of the final determination the Department should add the average of this range, or .375 percent, to the prime rate used in the *Preliminary Determination*.

The GOC, GOA and GOS each comment that the petitioner is mistaken and that the rate the Department used in its *Preliminary Determination* was the commercial prime rate of interest charged by private Canadian banks. Respondents note that this information was discussed and confirmed at verification.

Department's Position: As noted by the respondents, we verified that the prime rate used as the base-lending rate in our calculations at the *Preliminary Determination* was ''bank prime,'' or the prime rate charged by private commercial banks in Canada. Accordingly, we have not adjusted the prime rate for purposes of our final results.

Comment 15: Exclusion of Saskatchewan Breeder Association Loan Guarantee Program

The GOS argues that because the Department specifically excluded breeding livestock from the scope of this investigation, the Department should exclude the Saskatchewan Breeder Association Loan Guarantee program from further consideration. The respondent notes that the Department verified that this program is available only in connection with the purchase of breeding stock. Furthermore, the respondent notes that in previous determinations related to livestock the Department has declined to countervail programs related to breeding livestock because breeding stock was not covered by the order. *See Live Swine from Canada; Preliminary Results of Countervailing Duty Administrative Reviews,* 55 FR 20812, 20817 (May 21, 1990) (''*Live Swine from Canada 1990*'').

The petitioner contends that the respondent's argument fails to recognize that participants in the Saskatchewan Breeder Association Loan Guarantee program can sell the calves born to breeding livestock purchased with loans made available under this program. Because calves need not be sold for breeding purposes and may be placed directly into the production cycle, the benefits from this program accrue to all cattle producers. In addition, the petitioner argues that the respondent's reference to *Live Swine from Canada 1990* should be disregarded by the Department because the program in question was limited to veterinary care provided directly to breeding stock.

Department's Position: We agree with the GOS and have not countervailed this program because breeding livestock is not covered by the scope of this investigation. As noted by the GOS, we verified that loans from this program are limited to the purchase of breeding stock. As in *Live Swine from Canada 1990,* any benefits would thus be tied to breeding stock only. While we agree with the petitioner that the program in question is different from that examined in *Live Swine from Canada 1990,* the fact remains that in both cases the alleged benefits from each program go directly to non-subject merchandise and, thus, are not covered by the scope of the respective investigations.

Comment 16: Specificity of FIMCLA

The GOC argues that the FIMCLA program is not specific because the value of the benefits received by the hog and cattle industries are in proportion to these producers share of the Canadian agricultural economy. The GOC notes that in the *Preliminary Determination,* the Department compared the number of FIMCLA loan guarantees obtained by the cattle and hog industries to the total number of FIMCLA loan guarantees approved during the POI, without reference to any benchmark of proportionality. The GOC contends that this analysis is flawed for two reasons.

First, the GOC argues that it is Department practice to compare the benefits received by a particular enterprise with some objective benchmark in order to determine proportionality. *See Certain Steel Products from Korea,* 58 FR 37338, 37343 (July 9, 1993) (''*Korean Steel*''). Second, the GOC contends that the Department recently emphasized that it looks to the value, not the number, of guaranteed loans for purposes of assessing disproportionality of loan guarantees. *See Stainless Steel Plate from South Africa,* 64 FR 15553, 15564 (March 31, 1999).

The GOC states that use of the farm cash receipts statistics submitted to the Department would permit the Department to address these flaws. The GOC explains that this data demonstrates that, during the POI, the share of FIMCLA benefits received by the cattle and hog industries was significantly less than the share of farm cash receipts generated by those industries. Accordingly, the Department should find that FIMCLA is not specific and, therefore, not countervailable.

The petitioner counters that the GOC's argument is flawed for various reasons and that the Department should continue to find the FIMCLA program *de facto* specific in accordance with section 771(5A)(D)(iii) of the Act. With respect to the GOC's argument for an objective benchmark, the petitioner contends that only in unusual circumstances will the Department resort to examining *de facto* specificity by determining whether the benefits received by a particular enterprise or industry or group were disproportionate in relation to the economy as a whole. In support of its argument, the petitioner cites 19 CFR 351.525 of the *New CVD Regulations,* which discusses that the type of subsidy under investigation in *Korean Steel,* governmental use of the economy-wide banking system to direct credit to steel producers, required a broader analysis. (*See Countervailing Duties; Final Rule,* 63 FR 65348, 65359 (November 25, 1998). The petitioner argues that unlike *Korean Steel,* the FIMCLA program targets only one sector of the Canadian economy rather than the entire economy. Therefore, use of an external reference point is not warranted in this situation. Rather, the Department should continue with its standard methodology of examining the level of benefits received by one industry in comparison to other industries participating in the program.

The petitioner further argues that, in case an outside reference point is applied, the use of farm cash receipts is not reasonable. The petitioner notes that to the extent the farm cash receipts simply reflect the effects of subsidization, it would not be surprising that the amount of subsidies would parallel the dispersion of income. Moreover, long-term loans should not be measured on this basis because the GOC has reported this information for only one year, which was a calender year and not the POI.

Finally, the petitioner contends that the starting point of the Department's analysis of specificity is the number of users. (*See Countervailing Duties; Final Rule,* 63 FR 65348, 65359 (November 25, 1998)). Using this methodology, the beef and hog industries have historically

received between 25 and 30 percent of the FIMCLA loan guarantees and, as such, the Department's *Preliminary Determination* regarding FIMCLA should be upheld.

Department's Position: We disagree with the GOC in part. Disproportionality is fact-specific and determined on a case-by-case basis. As noted by the petitioner, the nature of the subsidy being investigated in *Korean Steel* was unusual and required a special analytical framework. Our typical specificity analysis examines disproportionality by reference to actual users of the program. In other words, we compare the share of the subsidy received by producers of the subject merchandise to the shares received by other industries using the program. *See Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Laminated Hardwood Trailer Flooring (LHF) from Canada,* 62 FR 5201, 5209 (February 4, 1997). Consistent with our usual practice, we have compared the level of benefits received by the beef and hog sectors under the FIMCLA program to the assistance received by the other agricultural industries participating in the program.

We agree, however, with the GOC that our disproportionality analysis should focus on the level of benefits provided rather than on the number of subsidies given to different industries. Therefore, we have revised our analysis to compare the value of the loan guarantees provided to industries participating in the FIMCLA program. Based on this comparison, we continue to find that the beef and hog industries received a disproportionate amount of assistance under the FIMCLA program during the POI. Accordingly, we confirm our preliminary finding that the FIMCLA program is *de facto* specific to the beef and hog sectors in accordance with section 771(5A)(D)(iii) of the Act.

Provision of Goods or Services

Comment 17: PFRA

The GOC argues that the Act does not permit the Department to countervail the public pastures provided under the PFRA if the price charged by the government for their use is consistent with the prevailing market. PFRA rates are comparable to the private pasture rates reported for Manitoba and Saskatchewan, according to the GOC, when the factors that diminish the value of public pastures are taken into account. The GOC argues that PFRA pastures have the following disadvantages: cows are commingled, cattle owners' access to their cattle is restricted, the PFRA forage is of poorer quality, certain specialty services are not provided, and public pastures are subject to multiple use. Because of such factors, according to the GOC, many of the surveyed ranchers indicated that they prefer private land over PFRA pastures and that many PFRA patrons move to private land when it becomes available.

The GOC requests that adjustments be made to private pasture rates to account for the differences between the two types of pasture services. The GOC notes that it has provided information on adjustments for three differences relating to: (1) The timing of the sale of cull cows, (2) early weaning and timing of the sale of calves, and (3) transportation to the pasture. The GOC urges the Department to make these adjustments and contends that when the adjustments are made, the Department will conclude that PFRA pasture services are not provided for less than adequate remuneration.

Lastly, while the GOC was only able to quantify the factors mentioned above, the GOC states that the Department should also consider other factors (disease associated with commingled pastures and the failure to provide specialized services offered by private pastures) that diminish the value of PFRA pastures.

The petitioner urges the Department to examine closely the differences in the public and private pastures alleged by the GOC. Specifically, according to the petitioner, the GOC has not established that cattle producers using private pastures have greater flexibility than public pasture users with respect to the timing of cattle removal. According to the petitioner, the timing of cattle removal on public pastures is not as rigid as portrayed by the GOC because roundup dates on public pastures are not necessarily set at the same time for all lessees and can be negotiated with the Pasture Manager. To support its argument, the petitioner cites to the PFRA Rules and Regulations, which state that when round up dates are not set the resulting date will be ''a matter of mutual agreement between the patrons and the Pasture Manager and will depend upon pasture operation at the time.'' Thus, according to the petitioner, the GOC has not established that cattle producers cannot remove cattle from public pastures on request.

Moreover, the petitioner claims that the GOC has failed to support the amount of the adjustment for culled cows. Specifically, the GOC has not established that producers cull one cow in ten on private pastures or that owners place older cows on public pastures.

Lastly, the petitioner states that the GOC has not supported its claim that private pastures provide grazing within 25 miles from the patron's farm or that transportation costs between private and public pastures are materially different.

The petitioner also challenges the GOC's reliance on a survey conducted for the purposes of this investigation to substantiate the need for these adjustments. According to the petitioner, the Department should not make adjustments that reflect the personal preferences of a limited survey of cattlemen. The petitioner argues that the personal preferences of the surveyed ranchers are not sufficient to establish that the PFRA pastures do not have an advantage over private pastures.

Department's Position: In accordance with section 771(5)(E) of the Act, when comparing the prices charged for public pasture services to those charged by private providers we have attempted to ensure that the prices compared are for nearly identical services. That is, when feasible, we have taken into account prevailing market conditions which include price, quality, availability, marketability, transportation, and other conditions of purchase or sale. In this regard, when it appears that a difference exists between a public good or service and a benchmark good or service, we will consider making an adjustment when the difference is quantifiable and is clearly demonstrated by evidence on the record. *See* Lumber at 22595.

In this case, we agree that the GOC has identified and supported certain adjustments that should be made. Specifically, we adjusted for the difference in costs associated with the timing of the sale of cull cows on private and public pastures. Since ranchers using private pastures have access to their herds and, hence, can cull cows in mid-summer, they receive a different service and a price adjustment is warranted. While the GOC argued that this adjustment should be larger, the information on the record did not fully substantiate the calculations suggested by the GOC. For example, while the GOC suggested that old cows would be culled in mid-summer, while cow prices are at their peak, we agree with the petitioner that there is no evidence that a patron would actually pay to have an old cow pastured for a season if the cow was already planned to be culled. Finally, while the petitioner has argued that PFRA patrons may be able to manage their herds and benefit from the early sale of culled cows and calves in the same manner as private pasture patrons, we found at

verification that the PFRA roundup and drop off procedures are quite rigid and do not generally allow for the management that the petitioner suggests.

With respect to the transportation adjustment urged by the GOC, the record does contain evidence that nearly ten percent of community pasture patrons incur high transportation costs because they live further than 50 miles from their respective pastures. However, the GOC did not provide evidence that this was unique to users of public pastures. Regarding the requested adjustment for differences in weaning and the timing of the sale of calves, the GOC did not provide evidence indicating that the majority of private pasture patrons choose to wean their calves early or that they actually sell calves at different times than community pasture patrons. Finally, as in the *Preliminary Determination* and as noted above, we have not made adjustments for costs that the GOC was unable to quantify.

With respect to the petitioner's challenge of the GOC's survey, while the number of people surveyed was limited, we determine that the survey conducted by the GOC provides an objective and representative measure of the costs faced by patrons of private pastures in Canada.

Comment 18: Appropriate Benchmark for Provincial Public Lease and Pasturing Rates

With respect to all three provinces which offer Crown lands for grazing and pasturing, the petitioner argues that the Department should rely on an average of the private rates for full-service pasturing in Manitoba and Saskatchewan and the private lease rate for land reported by the GOA as a representative benchmark. According to the petitioner, the statute specifically requires the Department to determine the adequacy of remuneration based on prevailing conditions ''in the country.''

The GOA contends that, not only is there no justification for using the hybrid number the petitioner has developed on areas outside of Alberta, but that the petitioner's data do not meet the criteria outlined in the Department's regulations at 19 CFR 351.511(a) for a proper benchmark because they simply do not represent the value of comparable land. The GOA further states that the Department is obliged by the Act and its regulations to use a benchmark that represents the prevailing market value of the good or service being evaluated. According to the GOA, the goods are public grazing leases in the various provinces and the only ''prevailing market value'' for a good with such inherently local value is a local, provincial benchmark.

Department's Position: As stated in the *Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod From Italy,* 63 FR 40474, 40481 (July 29, 1998), ''the adequacy of remuneration is normally determined in relation to local prevailing market conditions as defined by section 771(5)(E) of the Act to include, ''* * * price, quality, availability, marketability, transportation, and other conditions of purchase or sale.'' Consequently, the lease rates for private land in each province, when accurate and available, are an appropriate starting point for comparison to the respective lease rates for public land in each province.

Comment 19: Use of Facts Available With Respect to Alberta Crown Lands Basic Grazing Program

The petitioner argues that the Department should reject the GOA's entire response with respect to the leasing of Crown lands and instead apply adverse facts available because the GOA failed to report benefits, in the form of excess compensation from oil and gas companies, from the leasing of such lands.

The GOC and the GOA argue that the petitioner's comments on this issue and the petitioner's August 25, 1999, submission which first raised Bill 31 should be stricken from the record because the petitioner's submission was untimely. Specifically, the GOA cites to the Department's regulations at 19 CFR 351.301(b)(1) pointing out that the deadline for submission of factual information related to the GOA was June 9, 1999, which was seven days prior to the Alberta verification.

Department's Position: We disagree with the respondents that the petitioner's information regarding Bill 31 and the compensation system for lessees of public and private land should be stricken from the record. Although it was initially submitted after the deadline, we subsequently requested the information under section 351.301(c)(2)(i) of our regulations. Moreover, we believe this bill was highly relevant to the information sought in the our questionnaire. Bill 31 amends, among other acts, Alberta's Public Lands Act and the Surface Rights Act, the legislation underlying one of the programs being investigated in this proceeding (the Alberta Crown Lands Basic Grazing Program). Although the change in the Act may have occurred after the period of investigation and may not yet be in effect, our questionnaire specifically requested that the GOA describe any anticipated changes in the program and asked for documentation substantiating the GOA's answer.

We believe that disclosure of Bill 31 would have given the Department a fuller understanding of the lease system in effect during the POI. In particular, information regarding the passage of Bill 31 includes statements implying that cattlemen who graze their livestock on public lands in Alberta receive excessive compensation from oil and gas operators who lease the subsurface rights. As the petitioner originally alleged, and we sought to investigate, the question of whether the GOA was adequately remunerated for its provision of Crown lands has been a central issue throughout this case. Therefore, as stated above, we believe this information was highly relevant to our enquiry.

In light of this, the petitioner has argued that the Department should reject all of the GOA's response with respect to the Alberta Crown Lands Basic Grazing Program. However, we do not believe the criteria for making such a determination have been met. In particular, section 782(e) of the Act states that we shall not decline to consider information that is necessary to the determination if the information is timely, verifiable, not so incomplete that it cannot serve as a reliable basis for a determination, can be used without undue difficulties, and the interested party has demonstrated that it acted to the best of its ability. All of the information presented by the GOA, other than information regarding the Surface Rights Act and Bill 31, complies with these criteria and, thus, it would be inappropriate for us to disregard the information in making our determination.

However, with respect to the impact the Surface Rights Act and Bill 31 have on our adequacy of remuneration determination, we are using the facts otherwise available. The use of facts available is supported under section 776(a) of the Act because the necessary information is not available on the record. Although interested parties were given the opportunity and did submit information on this issue, the approaching deadline for determination did not provide us the opportunity to make the additional inquiries necessary for us to make a determination that does not rely on the facts available. In choosing the appropriate facts available, the petitioner has argued that we should use an inference that is adverse to the interests of the GOA. However, we do not agree that the GOA failed to cooperate by not acting to the best of its

ability. While the GOA did not provide information that we believe was relevant to our determination, its conclusion that the information was not relevant, particularly in light of the fact that Bill 31 is not yet in effect, does not imply that the GOA did not act to the best of its ability and, thus, failed to cooperate. We also note that when the Department specifically asked parties to submit information regarding Bill 31, the GOA did so. Therefore, an adverse inference in this instance would not be appropriate when determining the appropriate facts available.

Comment 20: Oil and Gas Compensation and the Adequacy of Remuneration

The petitioner argues that if the Department continues to accept the response of the GOA, the Department should include the benefit from oil and gas compensation when determining the countervailability of the program. According to the petitioner, the application of Alberta's Surface Rights Act and Public Lands Act results in lessees of public land profiting from excess compensation paid by oil and gas companies for access to leased land. In support of its argument, the petitioner cites to the legislative history of Bill 31 and articles published at the time of its passage. The petitioner argues that the approximately C$40 million of compensation received annually, as cited in the articles, exceeds any actual compensation for damages to lessee property or disruption suffered from oil and gas operations. Furthermore, the petitioner argues that the GOA has not submitted any evidence that private lessees receive the same amount of compensation as public lessees. In fact, the petitioner asserts that oil and gas companies compensate public lessees as they would compensate private landowners, not lessees.

The GOA contends that the petitioner's characterization of the application of Alberta's Surface Rights Act and Public Lands Act, especially in relation to Bill 31, is misinformed and based on public misperceptions about surface compensation rights in Alberta. According to the GOA, the Alberta Surface Rights Act gives equal rights to all owners and occupants of both public and private land to obtain compensation from industrial operators for the damages caused when industrial operations interfere with existing land use. The GOA contends that public lessees do not have any advantage over private lessees with respect to obtaining compensation and, thus, no adjustment is necessary when comparing public rates for the leasing of land to private rates for the leasing of land. The GOA also states that Alberta law does not permit cattle ranchers on public grazing leases to charge access fees to anyone. Specifically, the GOA notes that the Surface Rights Act reads, ''an operator who proposes to exercise a right of entry on land, other than land owned by the Crown * * * shall pay * * * an entry fee. * * *'' The GOA also notes that, under the Surface Rights Act, any compensation paid to a tenant is for loss of use and other damages to the leasehold operations and does not include any payment for the value of the land itself or for access to that land. Lastly, the GOA argues that there is no basis for crediting the petitioner's C$40 million figure as fact because none of the many quotations that cite it give a source for the number and Alberta officials have been unable to find any source for it.

Department's Position: As noted in the program write-up, we found that, under the current application of the Surface Rights Act, lessees of public land benefit from the provision of the land at less than adequate remuneration. Specifically, public lessees appear to receive more compensation from oil and gas companies for use and access to the land than they would if leasing the same land from a private provider. Hence, public land is more valuable to a lessee than private land and this value is not reflected in the rate charged by the government. Therefore, the government is not adequately remunerated for the provision of the land.

Comment 21: Appropriate Benchmark for Alberta's Public Lease Rates

The petitioner argues that the Department should look to other provinces if the private lease rate data provided for a specific province is inadequate. In this regard, the petitioner argues that the GOA has not established that the lease rate it reported for private land is a ''full-service'' rate that requires an adjustment for development costs, such as fences and water. To the contrary, according to the petitioner, there is evidence that the private lease rate is not a ''full-service'' rate. The petitioner notes that the lease rate for private land reported by the GOA is much lower than the rate for private full-service pasturing reported by the GOC for Manitoba and Saskatchewan.

Moreover, the petitioner contends that the GOA's reported lease rate for private land is based on a limited survey (the Custom Rates Survey) which could only account for .04 percent of Alberta's cattle population.

The GOA argues that the data from the Whole Farm Data Base, which represents a far larger sample of private leases than the Custom Rates Survey used in the *Preliminary Determination,* demonstrate that the private rental rate reported in the Custom Rates Survey is higher than the norm in Alberta. Regardless of which survey information the Department feels is the most appropriate, however, the GOA argues that all of the Alberta-specific numbers were generated from longstanding government surveys and, thus, provide a far more reliable benchmark than any non-Alberta data.

Department's Position: With respect to the two studies reported by the GOA, we note that both the Custom Rates Survey and the Whole Farm Enterprise Analysis were both conducted prior to the initiation of this investigation and, while limited in the number of those surveyed, we determine that they are objective and representative of the costs faced by lessees of private and public land in Alberta. Therefore, we have averaged the lease rates for private land from the Custom Rates Survey and the Whole Farm Enterprise Analysis for purposes of identifying an appropriate benchmark.

We agree with the petitioner that the lease rate for private land reported by the GOA is lower than the rate for full-service private pasturing in Manitoba and Saskatchewan, as reported by the GOC. However, we do not believe the comparison is on point. The two rates which the petitioner has compared are prices for two very different things. The lease rate for private land is a price for the provision of a specific good: land. The rate for full-service private pasturing is a price for the provision of a type of service: pasturing. Therefore, the comparison suggested by the petitioner does not undermine the reliability of the lease rate for private land reported by the GOA.

Comment 22: Appropriate Adjustments to Benchmark for Alberta's Public Lease Rates

The GOA argues that the Department correctly adjusted the benchmark rate for taxes and developmental costs in the *Preliminary Determination,* and that both testimony from government experts and the results of the GOA's survey, which was confirmed at verification, indicate that lease holders of private land do not incur these developmental costs. Thus, in order to develop a fair comparison between public and private leases, the GOA argues that these adjustments should continue to be made.

In addition, the GOA posits that the Department should make additional adjustments. First, the GOA notes that

lessees of public land are only allowed to forage up to 50 percent of the land due to the multiple-use restraints placed on Crown lands. This requirement means that to get the same amount of forage, the lessees must fence in more land and develop additional dugouts, all of which contribute to added costs. According to the GOA, this was supported at verification, where it was demonstrated that lease holders on private land can utilize a far higher percentage of their leased forage for cattle grazing than can lease holders on public land. To further support its argument, the GOA notes that the Whole Farm Data Base indicated that grazing leases for public land support fewer AUMs per acre than grazing leases for private land. Second, the GOA argues that the Whole Farm Data Base also established significant differences between operating costs incurred by lessees of private and public lands. Again, the GOA argues that an adjustment should be made for this difference as well.

The petitioner argues that the Department should reject the GOA's proposed adjustments in their entirety. First, the petitioner states that adjustments for multiple-use costs of leasing land are unjustified unless the Department adjusts for multiple-use income such as compensation related to oil and gas exploration and extraction (*see Comment 20: Oil and Gas Compensation and the Adequacy of Remuneration,* above). Second, the petitioner contends that the GOA has not established that a lessee of public land must fence and water at least 50 percent more land to graze the same number of cattle since the GOA has not established that private lessees are not required to preserve forage for other users as well. Finally, the petitioner argues that the Department should not adjust for operating and capital costs because, even if grazing lessees on public land incur more operating and capital costs than private lessees, these costs have not been shown to be directly related to conditions only on public pasture. According to the petitioner, the cost differences could arise because the lessees of public land are less adept managers or less prudent buyers than private lessees.

Department's Position: In order to make the comparison required by section 771(5)(E) of the Act, we found it necessary to adjust the lease rate for private land downward to account for differences between the leases of public and private land. Specifically, we adjusted for differences in costs associated with the paying of taxes, construction of fences, construction of water dugouts, and a multiple-use cost for limits on forage. While the respondent has argued that the multiple-use cost adjustment should include expenses for additional fencing and water facilities, we note that there is no evidence supporting the contention that an additional dugout is necessary other than an anecdotal statement that ''cattle will not travel more than one-half mile for water.'' However, contrary to the petitioner's claim, there is evidence on the record supporting the contention that additional acres must be used by a public land lessee to obtain the same amount of forage as a private land lessee and, thus, additional fencing would be required. Specifically, public land lessees may only forage 50 percent of their land, which results in fewer AUM being available per acre than a lessee of private land has at his or her disposal.

With respect to additional adjustments for differences in operating and capital costs, while we did make some of these adjustments in the *Preliminary Determination,* we have not done so for this final determination. While the GOA was able to quantify them, the GOA did not provide adequate explanation as to why differences exist for such expense. Nor did the GOA adequately demonstrate that the difference is solely attributable to the fact that one group of farmers leases public land while another group leases private land. Therefore, we have not made adjustments for these costs. Finally, as in the *Preliminary Determination* and as noted above, we have not made adjustments for costs that the GOA was unable to quantify.

Lastly, with respect to the petitioner's argument that the Department should only make adjustments for multiple-use costs if we take into account multiple-use income, such as excess compensation from oil and gas companies, as noted in Comment 24, we have taken into account the application of the Surface Rights Act and the resulting differences in compensation between private and public lessees when examining the adequacy of remuneration.

Comment 23: Alberta Grazing Reserves

The petitioner argues that the Department should not use the rates charged by privatized reserves as a benchmark for the full-service rates for Alberta's public grazing reserves. In the petitioner's view, such a comparison would be inappropriate because the privatized reserve rates may be subsidized through a ''sublease.'' With respect to this ''sublease,'' the petitioner argues that, as facts available, the Department should compare the average rate charged by the GOA to privatized reserves for government land to the unadjusted average rate noted above in order to ascertain the subsidy provided to the privatized reserves.

The petitioner also argues that rather than calculating an average rate for full-service public grazing reserves in Alberta, the Department should calculate five average full-service rates for Alberta's public grazing reserves based upon the four regions of Alberta's Traditional Community Pasture program and the Special Areas pastures.

The GOA argues that evidence on the record demonstrates that Alberta's privatized reserves are charging their clientele lower prices than the government was charging when the reserves were in government hands. According to the GOA, this evidence confirms that the government-run reserves have been charging rates consistent with the commercial market. The GOA argues further that the government's charge to the privatized reserves for use of government land is not subsidized. According to the GOA the rates qualify as being market-determined because they were developed through arm's-length negotiations and the rates are also consistent with properly adjusted private grazing lease benchmarks.

Department's Position: We have examined the possibility of whether the rates for private pasturing may be subsidized through the government's provision of land at less than adequate remuneration to the operators of the privatized reserves. In doing so, we have looked at the rental fees charged by the government to the privatized reserves (less maintenance fees). The resulting average rental charge was higher than the adjusted rate for leases on private land derived from our examination of the Alberta Crown Lands Basic Grazing Program. Therefore, we determine that the government is adequately remunerated for its provision of land to the privatized reserves.

With respect to the petitioner's argument that we should calculate five separate full-service public pasture rates, we note that such a task is unnecessary as the range of prices charged by the government for the public pastures are all lower than the private pasturing rate reported by the GOA.

Comment 24: Specificity of the Provision of Crown Lands in Manitoba and Saskatchewan

Both the GOS and the GOM argue that the provision of Crown lands in the two provinces is neither *de jure* nor *de facto*

specific. According to the GOM and the GOS, Crown lands are available to all agriculture and objective criteria and conditions are used to determine agricultural producers' eligibility for the various uses of Crown lands. Both governments note that not all land is suitable for agriculture and that determinations on suitability are made by professional agrologists. Based on the above, the two governments contend that the provision of Crown lands is not specific because Crown lands are available to the entire agricultural sector.

The petitioner argues that the provision of Crown lands in both provinces is specific. With respect to Manitoba, the petitioner notes that the Manitoba Crown Lands Act expressly limits access to farmers through forage and cropping leases. According to the petitioner, because forage leases are provided for the grazing of livestock, including cattle, the law expressly limits forage leases to the livestock industry. Additionally, the petitioner argues that all leases are limited to a group of enterprises or industries in accordance with the Act and the Department's precedent.

With respect to Saskatchewan, the petitioner notes that Saskatchewan's Provincial Lands Act makes leases available only for purposes of grain farming, cattle grazing, or perennial hay production. As for Saskatchewan's pasture program, the petitioner notes that the Saskatchewan Provincial Community Pasture Regulations define livestock as cattle or sheep only. Thus, according to the petitioner, the laws and regulations governing Saskatchewan's Crown lands expressly limit access to grazing leases and community pastures to the cattle industry specifically, or a group of enterprises or industries, including the cattle industry.

Department's Position: While the respondents have argued that both the Saskatchewan Crown Lands Program and the Manitoba Crown Lands Program are not specific, we have found otherwise. The programs are limited by law and regulation to certain subsets of agricultural producers. Moreover, both provinces' programs are specific as a matter of fact in accordance with section 771(5A)(D) of the Act.

The GOS reported that, during the POI, approximately 800,000 acres of Crown lands were leased for cultivation and 5.4 million acres were leased for grazing. The GOM reported that, during the POI, 21,716 acres of Crown lands were leased for cultivation and approximately 1.6 million acres were leased for grazing. Based on the above, we find that those industries which utilize grazing leases, livestock industries such as cattle, are predominant users of both programs and, thus, the programs are *de facto* specific.

Comment 25: Use of Facts Available With Respect to Manitoba Crown Lands Program

The petitioner argues that while the GOM did submit the underlying data from Manitoba Agriculture's 1997 survey at verification, it failed to do so prior to verification despite Department requests. The petitioner further argues that, in light of this, the GOM failed to establish that the Department should make adjustments to the lease rates for private land. Consequently, the petitioner urges the Department to reject the GOM's response with respect to this program and to rely on alternative lease rates for private land as ''facts otherwise available.''

The GOM argues that it fully cooperated with the Department and never withheld information. The GOM contends that it could not ''provide copies of any reports or summaries related to this study'' because there were no formal reports and, thus, none were available to provide. In support of its position, the GOM cites to the Department's verification report which states, ''because results of the survey were never published or distributed, no reports of the data were prepared or published * * *. However, they have the computer tabulated results from the survey and provided a spreadsheet of those results.'' Therefore, according to the GOM, nothing was withheld from the Department.

Department's Position: We have found the GOM to be fully cooperative throughout this proceeding. The underlying data, which supports the lease rates for private land reported by the GOM, was reviewed and taken as an exhibit at verification. The data was not in the form of a report or a summary related to the study, which is what we asked for in our supplemental questionnaire. Rather, as noted in the verification report, no reports of the data were prepared or published and, thus, the GOM did not ignore a request for information when it responded to our supplemental questionnaire.

Comment 26: Appropriate Benchmark for Manitoba's Public Lease Rates

The GOM argues that the Department did not use the correct benchmark in its Preliminary Determination because it blended core and fringe private lease rates. Instead, the GOM states that the Department should use the lease rate for private fringe lands only. The GOM notes that at verification, the Department found that the fringe areas are typical of the areas where most (85 percent) Crown lands are located and, thus, the fringe areas are more directly comparable.

If the Department uses the information submitted by the GOM, the petitioner argues that the Department should not accept the GOM's claim that the rental rate for private fringe land, as reported in the 1997 survey, is more comparable to the rate charged for Crown lands. According to the petitioner, the claim is an assertion, not supported in the record. Furthermore, the petitioner contends that the location of the land is immaterial because if Crown lands are located in the fringe area, then the number of AUMs the Minister could permit to graze on the land would presumably be less than in the core area. Thus, the Department should continue to use the average lease rate for private land in the fringe and core areas, as was done in the *Preliminary Determination.*

Department's Position: We agree with the GOM that the majority of Crown lands are located in fringe areas. At verification we reviewed maps and vegetation inventories that supported the GOM's claim with respect to fringe and core areas. However, we do not agree that the lease rate for public grazing land should be compared solely to the private fringe area rate because not all of the GOM's Crown lands are located in fringe areas. Instead, we have used a weighted average lease rate for private land based on both core and fringe area rates.

Comment 27: Appropriate Adjustments to Benchmark for Manitoba's Public Lease Rates

The petitioner states that the Department should only adjust lease rates for private land downward if the GOM establishes that the lease rates for private land include additional services that are not covered by lease rates for public land. In the petitioner's view, the GOM failed to do this. The petitioner notes, for example, that a majority of the private land lessees questioned for the 1997 survey indicated that they are required to pay for fence and water system maintenance and yet, the GOM is requesting an adjustment for these items.

The GOM responds by noting that the Department reviewed in detail at verification, in three provinces, the various reasons why lessees are willing to improve public Crown lands available for lease, and why the adjustments made by the Department are appropriate. The GOM also notes

that the 1997 survey asked lessees whether they were required to pay for the repairs and maintenance on the fence and/or watering system, not the installation of fences or watering systems, which is what the adjustment is attempting to capture.

Department's Position: Based on our review of the information, we are persuaded that it is necessary to adjust the lease rate for private land downward to account for differences between the leases on private and public land. Lease rates for private land are generally for land which is fenced, has a water system, and where the owner of the land pays local taxes. Conversely, the lessees of public land are expected to construct fences and watering systems and pay local taxes. Thus, we adjusted for differences in costs associated with the paying of taxes, construction of fences and construction of water dugouts. While the petitioner notes that the 1997 survey indicates that lessees of private land are required to pay for fence and water system maintenance, we agree with the GOM that the claimed adjustment is for fence and water system construction, not maintenance.

Comment 28: Appropriate Benchmark for Saskatchewan's Public Lease Rates

With respect to Saskatchewan's Crown lands, the petitioner argues that the no-service lease rate for private land reported by the GOC does not include additional costs such as fencing, water provision, and taxes. Thus, it is inappropriate as a benchmark rate. Nonetheless, if it is used as a benchmark, it should not be adjusted.

The GOS contends that ''no-service'' refers only to livestock management and does not mean that rates for leases on private land do not cover additional costs. The GOS contends that the petitioner is merely attempting to confuse the issue by suggesting that the Department compare the cost of both renting land and pasturing cattle with the cost of simply renting land.

Department's Position: We agree with the GOS that the GOC's survey refers to whether pasture services are provided and not whether taxes are paid by the landlord or whether some of the land is already fenced with dugouts. Therefore, the no-service rate is an appropriate benchmark and adjustments for these differences are appropriate.

Comment 29: Appropriate Adjustments to Benchmark for Saskatchewan's Public Lease Rates

The petitioner argues that the adjustments to the lease rate for private grazing land reported by the GOS are unreasonable because they are higher than the difference between the no-service and full-service pasturing rates in Saskatchewan, and higher than the estimated adjustment costs in Manitoba. Therefore, according to the petitioner, any adjustment for alleged costs included in lease rates for private land should be capped at the difference between the no-service and full-service pasturing rates. When comparing the lease rate for public land to an adjusted full-service lease rate for private pasturing, the petitioner notes that a benefit is found.

The GOS states that because a private no-service lease still includes various responsibilities of the private landlord, which are not included in a Crown lands lease, adjustments are necessary in order to assure the ''comparability'' contemplated by the Department's regulations.

Department's Position: We adjusted the lease rate for private land downward to account for costs associated with the paying of taxes, construction of fences and construction of water dugouts. However, while the respondent has argued that we should make a full adjustment for these expenses, we note that the no-service rate being relied upon as a benchmark does not always include the provision of fences. At verification, we learned that no-service ''was identified as the simple rental of land, which may or may not be fenced.'' *See* Page Eight of the Memorandum to Susan Kuhbach from James Breeden and Zak Smith, ''Verification Report for the Government of Canada in the Countervailing Duty Investigation of Live Cattle from Canada,'' dated August 27, 1999. While we acknowledge that the overwhelming evidence in this investigation indicates that leased private land has fences, in this case, because the rate being relied upon is a ''no-service'' rate and the record indicates that this particular rate does not always include the provision of fences, we have not made a full adjustment for fencing costs. Rather, we have made a partial adjustment by dividing the fence expense in half.

While we agree with the petitioner that the adjustments to the lease rate for private land are greater than the difference between the no-service private pasturing rate and the full-service private pasturing rate in Saskatchewan, and greater than the claimed adjustments in Manitoba, we do not agree that this comparison is appropriate. First, the petitioner is comparing pasturing rates and land leasing rates, two different things. Second, the petitioner is comparing experiences in two different provinces. There is no reason to expect that local tax rates will be similar across provinces or that the cost of construction materials and/or labor will not vary amongst provinces, especially when there is evidence to the contrary. In that regard, we note that the information on these adjustments is fully supported by the record evidence and verification. Specifically, the GOS provided supporting source documentation for each adjustment in the form of audited financial statements, invoices, and contracts.

Comment 30: Saskatchewan's Community Pastures

The GOS argues that while it previously suggested that full-service private pastures were most similar to the GOS' community pastures, it now believes that partial-service private pastures provide a better comparison. According to the GOS, Saskatchewan's community pastures do not offer the same range of services as full-service private pastures and instead more closely resemble partial-service private pastures which have shared responsibility and work between the customer and the land owner.

The GOS cites to several factors in support of its argument. First, the GOS contends that the full-service rate provided by the PFRA study does not include any commingled herds, while its community pastures are commingled. Second, the GOS contends that the majority of private pastures used to generate the full-service rate consist of improved pasture, while community pastures are generally less productive native range. Third, the GOS asserts that while a full-service pasture will move cattle to more productive land and offer supplemental feed when forage becomes less productive, such services are not offered by community pastures. Fourth, the GOS states that in full-service private pastures calves are often weaned early, placed on higher quality feed, and that producers have general control over the breeding program. According to the GOS, such options are not available on community pastures. Lastly, the GOS argues that, full-service private pastures allow producers to deliver and pick up cattle at their convenience. According to the GOS such flexibility allows private users to cull cows (usually ten percent of a herd) which are not bred by mid-summer, a time when culled cows yield a higher price than at the end of the season. According to the GOS we should adjust for this difference because community pastures require pickup and delivery on a fixed schedule and do not allow pickup mid-summer.

The petitioner argues that the GOS has not established that partial-service pastures are more comparable to community pastures. According to the petitioner, the GOC survey data, upon which the GOS is relying, does not provide information indicating which rate, if any, includes improved pasture or convenient owner access to herds for the control of calves, breeding, and removal times. The petitioner contends that because the GOS has failed to establish that full-service private pastures offer materially different services than the GOS' community pastures, the Department should continue to compare the full-service private pasture rate to the community pasture rate.

With respect to possible adjustments to the full-service rate, the petitioner argues that the GOS has failed to quantify the value of the alleged costs associated with commingling and access, failed to establish that on private pastures cows are culled in July (mid-summer), and has failed to establish that ten percent of cows are culled each year.

Department's Position: We agree with the petitioner that the GOC survey data do not provide information indicating that partial-service private pasturing is more similar to GOS community pasturing than full-service pasturing. As noted in the verification report, with respect to the GOC survey, ''full-service was identified as situations where the cows are cared for during the entire season and the customer only needs to drop off his or her cows and pick them up. Partial-service was identified as shared responsibility and work between the customer and the land owner.'' Thus, while it may be true that full-service private pasturing in Saskatchewan offers more services than GOS community pasturing, there is no information on the record that would indicate that partial-service private pasturing offers a better comparison to the pasturing services offered by the GOS.

We have made certain downward adjustments to the full-service private pasture rate to account for differences between full-service pasturing offered on private land and public pasturing. Specifically, we adjusted for the difference in costs associated with the timing of the sale of cull cows. While the GOS argued that this adjustment should be larger, the information on the record did not fully substantiate the calculations suggested by the GOS. For example, the GOS relied upon the GOC's statement that ten percent of cows are culled each year to support its argument for making an adjustment to account for differences in access to those cows which do not become pregnant. However, there is no evidence to support the assumption that the ten percent of cows culled each year are only those cows which do not become pregnant. Rather, it is reasonable to believe that some of these cows are culled on the basis of age alone and were never planned to be bred. In that regard, there is no evidence that a patron would actually pay to have an old cow pastured for a season if the cow was already planned to be culled. Finally, as in the *Preliminary Determination* and as noted above, we have not made adjustments for costs that the GOS was unable to quantify.

Other Comments

Comment 31: Allocation of Benefits By Total Sales Value Of Cattle

The GOC argues that the Department's regulations require it to distribute the benefits from those programs found to be countervailable across all products that have received the alleged benefits (19 CFR 351.525). The respondent contends that the Department's calculation of the denominator in the *Preliminary Determination* did not comply with this standard because certain programs that were found to be countervailable and included in the numerator did not correspond to any component included in the denominator. In support of its argument, the respondent refers to *Industrial Phosphoric Acid from Israel,* in which the Department reaffirmed the necessity that the ''calculation of a subsidy reflect the same universe of goods. Otherwise, the rate calculated will either over or understate the subsidy attributable to the subject merchandise.'' *See Industrial Phosphoric Acid from Israel,* 63 FR 13626, 13630 (March 20, 1998). Because the benefits in this investigation have been attributed to five commercially distinct products (calves, feeder cattle, backgrounded cattle, slaughter cattle, cull cows and bulls), the respondent argues that the sales value of all five of these products must be included in the denominator for purposes of correctly attributing benefits to the subject merchandise.

The petitioner argues that respondents have not demonstrated that benefits from particular programs impact any one of the ''distinct'' cattle production stages it identifies, or should only be allocated to that phase. Furthermore, petitioner explains that the use of total Canadian cattle sales during the POI will likely count the same animal more than once because cattle are moved through the different production stages within the same year, thereby capturing multiple sales of the same animal. Therefore, the sales figures advocated by respondents are inflated. The petitioner contends that the Department should continue to allocate subsidies over finished cattle or, alternatively, compute the subsidy rate on a production, or volume, basis rather than a value basis.

Department's Position: Contrary to respondent's assertions, the attribution approach applied in this investigation accurately measures the countervailable benefits conferred and is consistent with the countervailing duty statute. Although we recognize that there are distinct commercial segments within the cattle industry, the respondent incorrectly implies that the total value of the animal is equal to the sum of transactions specific to the animal as it moves through the different stages of the production cycle, thereby inflating the universe of sales to which the benefits apply. This flaw in the respondent's argument is illustrated by the petitioner's assertion that using total cattle sales will likely result in the double counting of certain animals due to the nature of the production cycle. Therefore, in order to avoid overvaluing the denominator, we have continued to apply the methodology used in our *Preliminary Determination* in which we calculated total sales value by adding domestic slaughter and international export statistics.

Based on information collected at verification, we have also included an amount for on-farm consumption to this figure. As a result, we have allocated the countervailable benefits received by cattle at each stage of the production cycle over the sales value of ''finished'' cattle, or animals that have completed the production cycle. We believe this attribution method most accurately captures a comparable universe of goods as discussed in *Industrial Phosphoric Acid from Israel.*

Comment 32: NISA and Regional Specificity

The petitioner argues that NISA benefits provide a regional subsidy because producers' geographic location determines eligibility under the program. The petitioner notes that cattle and calves are eligible commodities for NISA benefits in a select number of provinces and to the extent that a producer is eligible for the NISA program based on its geographic location, the program is regionally specific. According to the petitioner it is most important to note that, while Alberta cattle are not eligible commodities under the program, Alberta is the largest provincial

producer. Based on this fact, the petitioner contends that NISA is targeted to cattle producers in other regions where cattle production is less intensive. According to the petitioner, the rationale for why cattle are not eligible commodities in certain provinces is not relevant to an examination of specificity. Instead, for the petitioner, the key questions is whether ranchers in over half of Canada receive NISA benefits for their livestock. As this is not the case, the petitioner contends that the Department should recognize the specific nature of the program.

The GOC argues that the Department's precedent demonstrates that a ''program is determined to be regional, and, therefore, limited only when its funding is specifically authorized by the central government to benefit only some regions within its jurisdiction.* * *'' *See Certain Granite Products from Spain,* 53 FR 24340 (June 28, 1988). Thus, according to the GOC, only when the granting authority has excluded certain regions from participating in programs will regional specificity be found. The GOC notes that, while the petitioner has said that a producer's geographic location determines its eligibility under NISA,'' NISA operates in all provinces and no provinces are excluded (noting that Yukon and the Northwest Territories can join if they so choose).

The GOC further notes that a large number and wide variety of commodities are covered by NISA and the fact that not every producer commodity group in every province participates in NISA does not transform NISA into a regional subsidy. First, the GOC argues that farmers in all of the provinces participate and the lack of participation by some provinces as to certain commodities does not alter the fact that all provinces are eligible and that producers in all provinces receive benefits. With respect to those provinces (Alberta, British Columbia, and Quebec) for which cattle are not eligible commodities, the GOC notes that other agricultural commodities in each of these provinces are covered by NISA. Lastly, the GOC argues that to avoid any further re-investigation of NISA, the Department should make clear in the final determination that the program is non-specific not only to cattle but as to all other agricultural commodities.

Department's Position: Section 771(5A)(D)(iv) of the Act reads, ''where a subsidy is limited to an enterprise or industry located within a designated geographical region within the jurisdiction of the authority providing the subsidy, the subsidy is specific.'' We have found that NISA operates in all Canadian provinces. That is, NISA benefits are not limited to an enterprise or industry located within a specific geographical region within Canada. First, NISA is a whole-farm program in which any farmer that produces an eligible commodity can participate. The number of eligible commodities is exhaustive and demonstrates that the benefits are not limited to a particular enterprise or industry. Furthermore, the eligibility of commodities is dependent on a particular commodity associations desire to participate. Thus, no commodities are excluded by federal or provincial government action. Second, the farmers that may participate in NISA are not located within a specific geographical region. Rather, producers in all provinces receive benefits, regardless of their location. Eligibility for NISA participation is based upon the commodities that a farmer produces, not his or her geographic location. Therefore, as noted in the *Preliminary Determination,* benefits provided through the NISA program are not limited to a particular region. While certain commodities are not eligible for matching funds within certain provinces, it is because the producers of these commodities choose not to participate, not because the program is limited to an enterprise or industry located in a particular region.

With respect to the GOC's comment that we should find NISA non-counteravailable for all products, we note that our investigation of NISA only related to whether cattle receive a counteravailable subsidy. We have not examined whether the program is counteravailable to other commodities.

Comment 33: Saskatchewan Livestock and Horticultural Facilities Incentives Program

The GOS argues that the Livestock and Horticultural Facilities Incentives Program (''LHFIP'') is an adjustment to, and is integrally linked with, the provincial sales tax. According to the GOS, the provincial sales tax (the Education and Health Tax (''E&H Tax'')) offers a standard tax exemption to all agricultural production. Thus, the GOS argues that LHFIP is not limited only to the livestock and horticultural industries and, therefore, is not counteravailable. The GOS contends that the LHFIP was introduced as part of a series of adjustments to the E&H Tax, and is intended to put livestock operations on the same footing as other agricultural operations with respect to the E&H Tax exemption for agricultural inputs and the lack of an exemption for certain construction materials.

Citing to the *New CVD Regulations,* the GOS argues that all of the Department's conditions for integral linkage are met. According to the GOS, the LHFIP has the same purpose and same effective benefit as the E&H Tax legislation and was linked with the E&H Tax at inception.

Lastly, the GOS notes that the functioning of the LHFIP is analogous to a VAT rebate program that the Department found noncountervailable in *Standard Chrysanthemums From the Netherlands; Final Results of Countervailing Duty Administrative Reviews,* 61 FR 47886 (September 11, 1996).

Department's Position: In examining the legislation and regulations governing both the LHFIP and the E&H Tax, we find that, even if the two programs were found to be integrally linked under the regulations governing this case, the program would still be specific, and, thus, countervailable. According to the laws and regulations for the E&H Tax and the GOS itself, although most agricultural inputs to production (such as machinery, fertilizer, seed, chemicals, and livestock) are exempt from the E&H Tax, the E&H Tax continues to be levied on certain construction materials and equipment for all agricultural products that could be used for both agricultural and non-agricultural purposes. Although the LHFIP created an exemption from the E&H Tax for livestock and horticultural producers, the tax on these types of construction materials is apparently still levied on other agricultural producers not related to livestock and horticulture production. Thus, even if the programs were integrally linked, because the legislation administering these programs expressly makes them available to only certain industries, they would still be specific. Therefore, any determination on the integral linkage of these programs is not necessary.

Verification

In accordance with section 782(i) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government officials, and examining relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit of the Department of Commerce, Room B–099.

Summary

The total net countervailable subsidy rate for all producers or exporters of live cattle in Canada is 0.77 percent, ad valorem, which is de minimis. Therefore, we determine that countervailable subsidies are not being provided to producers or exporters of live cattle in Canada.

Return or Destruction of Proprietary Information

This notice will serve as the only reminder to parties subject to Administrative Protective Order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) and 777(i) of the Act.

Dated: October 12, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–27570 Filed 10–21–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of a Meeting To Discuss an Opportunity To Join a Cooperative Research and Development Consortium on Characterization and Modeling of the Interface/Interphase of Polymeric Materials and Systems

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to attend a meeting on November 30, 1999 and December 1, 1999 to discuss the possibility of setting up a cooperative research consortium on Characterization and Modeling of the Interface/Interphase of Polymeric Materials and Systems. The goal of the consortium is to develop: advanced measurement techniques for evaluating surface mechanical properties of polymeric materials, computer models for interface and interphase characterization of multiphase polymer processing, and nanoscale probes for characterizing the interphase region in polymer systems.

DATES: The meeting will take place on November 30, 1999 and December 1, 1999 at 8:30 a.m. Interested parties should contact NIST to confirm their interest at the address, telephone number or FAX number shown below.

ADDRESSES: The meeting will take place in the Advanced Chemical Sciences Laboratory (ACSL), Room 302, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Cavanagh, Chemistry Building (222), Room B366, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001. Telephone: 301–975–2368; FAX: 301–216–1134; e-mail: cavanagh@nist.gov.

SUPPLEMENTARY INFORMATION: Any program undertaken will be within the scope and confines of The Federal Technology Transfer Act of 1986 (Pub. L. 99–502, 15 U.S.C. 3710a), which provides federal laboratories including NIST, with the authority to enter into cooperative research agreements with qualified parties. Under this law, NIST may contribute personnel, equipment, and facilities but no funds to the cooperative research program. This is not a grant program.

The R&D staff of each industrial partner in the Consortium will be able to interact with NIST researchers to develop:

(1) Advanced measurement techniques for evaluating surface mechanical properties of polymeric materials and systems as a function of time and loading rate, and to correlate deformation scales from molecular to visual, including the development of mathematical models to assess the impact of surface deformation on the appearance of polymeric materials.

(2) Realistic computer modeling program(s) for interface and interphase characterization and prediction for the needs of multi-phase polymer processing under shear flow and temperature gradients; to carry out necessary measurements for obtaining parameters to input for the modeling; to develop characterization techniques and procedures for evaluating the interphase structure and its formation during the processing of a polymer paint/coating on a structured substrate surface formed by a process described above, and to develop protocols for interactive optimization.

(3) Nanoscale chemical and mechanical probes for characterizing the interphase region in polymer coating/substrate systems, to model interphase development in terms of the controlling thermodynamics and kinetics, including the effects of additives, and to develop a database of important characterization and modeling parameters.

Dated: October 18, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–27680 Filed 10–21–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100499C]

Endangered Species; Permits

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

ACTION: Receipt of an application for a scientific research permit (1227); receipt of an application to modify a permit (1051); and issuance of a permit (1219).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement:

NMFS has received a permit application from Dr. Peter Dutton, of NMFS-Southwest Fisheries Science Center (SWFSC) (1227); NMFS has received an application for modifications to an existing permit from Mr. Jorgen Skjeveland, of the U.S. Fish and Wildlife Service (FWS) (1051); and NMFS has issued a permit to Mr. Larry Goodman, of the U.S. Environmental Protection Agency (EPA) (1219).

DATES: Written comments or requests for a public hearing on either the new application or the modification request must be received on or before November 22, 1999.

ADDRESSES: The applications and related documents are available for review in the following office, by appointment: Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: Terri Jordan, Silver Spring, MD (301–713–1401).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are

consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Director, Office of Protected Resources, NMFS. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species are covered in this notice:

Sea Turtles

Endangered Leatherback turtle (*Dermochelys coriacea*).

Fish

Endangered Shortnose sturgeon (*Acipenser brevirostrum*).

New Application Received

SWFSC has applied for a 2-year scientific research permit (1227) that would authorize takes of leatherback sea turtles. Recent studies suggest that leatherback turtles gather in California waters during early fall, and that Monterey Bay is an important forage area for leatherback turtles in the Pacific. This study proposes to capture up to 5 of these turtles for genetic stock identification and equip them with transmitters to track movements and dive behavior. This will serve as a feasibility study for future work aimed at addressing priorities outlined in the U.S. Pacific leatherback Recovery Plan; to identify critical forage habitats, genetic stock structure, migratory corridors and potential fishery impacts on this species in the Pacific.

Modification Request Received

FWS requests a modification to Permit 1051. Permit 1051 authorizes the direct take of shortnose sturgeon by the permit holder, to be conducted over a five-year period. Thirty (30) adult and subadult shortnose sturgeon may be captured annually from the Chesapeake Bay and thirty (30) adult and subadult shortnose sturgeon may be captured annually from the Delaware River/Bay estuary by gillnet and may be examined, measured, weighed, photographed, tissue sampled, and PIT and T-Bar tagged. Ten (10) shortnose sturgeon may be fitted with sonic tags. The fish shall be released at the location of capture immediately following completion of the above procedures. FWS requests an increase in the authorized annual take for the purpose of concentrating tagging and sample collection efforts to the Delaware River. The applicant proposes to increase sonic tags from 10 to 25, an increase of 15 tags and increase sample collection from 30 to 60 fish. The modification is requested for the duration of the permit, which expires May 31, 2002.

Permit Issued

Notice was published on June 3, 1999 (64 FR 29839), that EPA had applied for a scientific research permit. Permit 1219 was issued on September 29, 1999, authorizing takes of shortnose sturgeon for scientific research in Gulf Breeze, Florida. The purpose of the research is to obtain information on the tolerances of port-larval and early-juvenile shortnose sturgeon to low dissolved oxygen (D.O.), particularly in relation to temperature and salinity. Permit 1219 expires September 30, 2000.

Dated: October 13, 1999.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–27583 Filed 10–21–99; 8:45 am]

BILLING CODE 3510–22–F

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 agenda will include a discussion of the Defense Labor-management Relations Evaluation initiative and other related Partnership topics.

DATES: The meeting is to be held November 17, 1999, in room 1E801, Conference Room 7, the Pentagon, from 1:00 p.m. until 3:00 p.m. Comments should be received by November 12, 1999, in order to be considered at the November 17 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: October 18, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–27575 Filed 10–21–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Domestic Advisory Panel (DAP) on Early Intervention and Education for Infants, Toddlers, Preschool Children, and Children With Disabilities

AGENCY: Department of Defense Domestic Dependent Elementary and Secondary Schools (DDESS).

ACTION: Notice.

SUMMARY: Pursuant to Public Law 92–463, as amended (5 U.S.C. app. II), notice is hereby given that a meeting of the Domestic Advisory Panel (DAP) on Early Intervention and Education for Infants, Toddlers, Preschool Children, and Children with Disabilities is scheduled to be held from 8 a.m. to 3 p.m. on December 7–8, 1999. The meeting is open to the public and will be held in the Director's Conference Room on the 9th floor, DoDEA Headquarters, 4040 North Fairfax Drive, Arlington, Virginia 22203. The purpose of the meeting is to: (1) Review the response to the panel's recommendations from the April 1999 meeting; (2) review and comment on data and information provided by the Department of Defense Domestic Dependent Elementary and Secondary Schools; and (3) establish subcommittee as necessary. Persons desiring to attend the meeting or desiring to make oral presentations or submit written

statements for consideration by the panel must contact Dr. David V. Burket at (703) 696–4354, extension 1455.

Dated: October 18, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–27576 Filed 10–21–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Marine Corps

Privacy Act of 1974; System of Records

AGENCY: U.S. Marine Corps, DoD.

ACTION: Amend records systems.

SUMMARY: The U.S. Marine Corps proposes to amend five systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on November 22, 1999, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Head, FOIA and Privacy Act Section, Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

FOR FURTHER INFORMATION CONTACT: Ms. B. L. Thompson at (703) 614–4008 or DSN 224–4008.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed actions are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety.

Dated: October 18, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

MJA00013

SYSTEM NAME:

Bad Checks/Withdrawal of Check Cashing Privileges Lists *(August 3, 1993, 58 FR 41254).*

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).'

* * * * *

STORAGE:

Delete entry and replace with 'Paper and electronic files.'

* * * * *

MJA00013

SYSTEM NAME:

Bad Checks/Withdrawal of Check Cashing Privileges Lists.

SYSTEM LOCATION:

Each Appropriated and Non-Appropriated Fund Activity having authority to accept personal checks from authorized patrons. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military personnel, active and retired; their authorized dependents of deceased military retirees; Marine Corps Exchange employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

File bulletins containing name, rank, Social Security Number and expiration date of restriction of privileges and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).

PURPOSE(S):

To provide a record of individuals who have issued bad checks at Appropriated and Nonappropriated Fund Activities having authority to accept personal checks from authorized patrons. The records are used to protect activities from unnecessary losses and to initiate administrative or criminal actions due to bad check offenses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Marine Corps compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic files.

RETRIEVABILITY:

Alphabetical by name and Social Security Number.

SAFEGUARDS:

Access limited. Secured in locked building during nonworking hours.

RETENTION AND DISPOSAL:

Destroyed when privileges are restored at the expiration of specified periods made known to the individual at the time privileges are revoked.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer of activity concerned. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding Officer of activity concerned. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding Officer of activity concerned. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Bad checks returned from the bank; notification from other commands,

Federal Bureau of Investigation, Naval Investigative Service or other state, local or Federal investigative agencies or Treasury Department.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MMC00003

SYSTEM NAME:

Activity Check In/Check Out File *(August 3, 1993, 58 FR 41254).*

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; and 10 U.S.C. 5041, Headquarters, Marine Corps.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Individual and service record.'

* * * * *

MMC00003

SYSTEM NAME:

Activity Check In/Check Out File.

SYSTEM LOCATION:

May be located at any U.S. Marine Corps or U.S. Marine Corps Reserve activity. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All members of the activity.

CATEGORIES OF RECORDS IN THE SYSTEM:

Date reported and verification of check-in/check-out procedure.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5031, Secretary of the Navy; and 10 U.S.C. 5041, Headquarters, Marine Corps.

PURPOSE(S):

To provide a record of members reporting to or leaving a unit for use in tracking property belonging to the unit.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Marine Corps compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On paper in files or on clipboard.

RETRIEVABILITY:

Alphabetically by last name.

SAFEGUARDS:

Access limited to activity personnel in the performance of their official duties.

After working hours, the office and building are locked. A guard is located in the general vicinity.

RETENTION AND DISPOSAL:

Retained for 6 months after action has been completed.

SYSTEM MANAGER(S) AND ADDRESS:

Activity commander. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the activity commander. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

Provide full name, Social Security Number, and military status. Proof of identity may be established by military identification card or DD–214 and driver's license.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the activity commander. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

Provide full name, Social Security Number, and military status. Proof of identity may be established by military identification card or DD–214 and driver's license.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual and service record.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MMC00008

SYSTEM NAME:

Message Release/Pickup Authorization File *(August 3, 1993, 58 FR 41254).*

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; and 10 U.S.C. 5041, Headquarters, Marine Corps.'

* * * * *

STORAGE:

Delete entry and replace with 'Paper and electronic records.'

* * * * *

MMC00008

SYSTEM NAME:

Message Release/Pickup Authorization File.

SYSTEM LOCATION:

Marine Corps activities. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All personnel authorized to release/pickup message traffic.

CATEGORIES OF RECORDS IN THE SYSTEM:

OPNAV Form 2160–5 (Message Release/Pickup Authorization).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5031, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps.

PURPOSE(S):

To provide a record of personnel authorized to release/pickup messages at command Communication Centers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear to the beginning of the Marine Corps compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Alphabetically by name.

SAFEGUARDS:

Located in a secure space within the Command Center, which is manned on a 24–hour basis.

RETENTION AND DISPOSAL:

Retained until individual is replaced or authorization is revoked by proper authority; then destroyed by burning or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Local commanding officers. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the local commanding officer. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the local commanding officer. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Organizations, departments, sections authorized to release/pickup messages for the command.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MMN00005

SYSTEM NAME:

Marine Corps Education Program *(February 22, 1993, 58 FR 10630).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Replace last sentence with 'U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; and 10 U.S.C. 5041, Headquarters, Marine Corps.'

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete paragraphs 2, 3 and 4.

* * * * *

STORAGE:

Delete entry and replace with 'Paper and electronic records.'

* * * * *

MMN00005

SYSTEM NAME:

Marine Corps Education Program.

SYSTEM LOCATION:

Primary system - Marine Corps Combat Development Command, Quantico, VA 22134–5050.

U.S. Marine Corps official mailing address are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Marine Corps personnel who have submitted written applications for participation in full-time, tuition assistance, off-duty, PREP, or other voluntary education programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains copies of individual's applications for participation in an education program; copies of correspondence between the Marine Corps, the individual and academic records and correspondence; test results; previous enrollments and disenrollments; and educational qualification data addressing the individual concerned.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5031, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).

PURPOSE(S):

To provide a record on individuals for use in educational and vocational counseling, selection, assignment and management of various educational and vocational programs attended by Marine Corps personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Educational Institutions - By officials and employees of those educational institutions to which the individual applies or which the Marine Corps contracts with, to provide full-time, off-duty or other educational programs.

The 'Blanket Routine Uses' set forth at the beginning of the Marine Corp's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Filed alphabetically by last name; by educational institution, educational program or unit of assignment. Cross reference by Social Security Number.

SAFEGUARDS:

Records are maintained in limited access working areas and are made available to persons other than the individual addressed only on a strict 'need-to-know' basis. After duty hours storage areas are locked.

RETENTION AND DISPOSAL:

Records are maintained a maximum of three years and then destroyed. In instances where individual completed less than three years, with no incurred service obligation, records are destroyed on program completion or transfer of individual from command maintaining record.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding General, Marine Corps Combat Development Command, Quantico, VA 22134–5050.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding General, Marine Corps Combat Development Command, Quantico, VA 22134–5050.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the commander of the activity to which they are assigned for duty.

U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

Requests from individuals who have made written application for the Special Education Program (SEP), Advanced Degree Program (ADP), Funded Legal Education Program (FLEP), College Degree Program (CDP), Marine Enlisted Commissioning Education Program (MECEP), Navy Enlisted Scientific Education Program (NESEP), Staff NCO Degree Completion Program (SNCODCP), or Marine Associate Degree Completion Program (MADCOP) should be addressed to the Commanding General, Marine Corps Combat Development Command, Quantico, VA 22134–5050. Telephone (703) 640–2399.

Written requests for information should contain name of the individual, current address and telephone number, and the academic program originally requested or in which participated.

For personal visits, the individual should provide personal identification.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Application and related documents including correspondence from the individual requesting an education program; correspondence originating in the Educational Services Branch or other Headquarters Marine Corps staff agencies; academic transcripts from educational institutions; and educational selection board results.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MMN00009

SYSTEM NAME

Military Police Information System *(February 22, 1993, 58 FR 10630).*

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).'

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete paragraphs 2 through 6.

STORAGE:

Delete entry and replace with 'Paper and electronic records.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records are maintained at varying times depending on the type of information. The retention varies from two to six years, and then is destroyed.'

MMN00009

SYSTEM NAME:

Military Police Information System (MILPINS).

SYSTEM LOCATION:

Decentralized segments exists at commands within area of jurisdiction.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Files contain information concerning both military and civilian personnel who have come in contact with the military police as victims, suspects, or witnesses to incidents, complaints reported to the Provost Marshal. Files also contain data on military personnel living in base sponsored housing, or who have registered weapons or pets aboard the base. Military personnel and civilians who have registered motor vehicles are also included.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incidents/complaints reported to the installation Provost Marshal and all subjects listed on Field Interviews/Reports by the military police. The individual's name, description, Social Security Number, address, offense charges, location of offenses/incident, date, time, blotter entry number, military police report number, and disposition of case are maintained. Housing information includes phone number, building number, address, and dependent information. Pet registration information includes species, sex, breed, color, name and inoculation dates. Weapon registration information includes brand name, caliber, type, and model. Motor vehicle information includes year, make, model, color, license number, insurance company, and decal information. Work section information includes phone number, division code, building number, building key access, and recall information. Personnel information includes date of birth, sex, race, age, and date transferred.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).

PURPOSE(S):

To provide a rapid means for military police to access reports for proper disposition of cases. The system also provides historical record of all reports on individuals who have come in contact with the military police as victims, suspects or witnesses to incidents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Marine Corp's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Filed by full name or Social Security Number.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained. Passwords are required to access those programs which produce printed output. Access to the computer is controlled via a centralized security office and printouts many only be receipted for by designated personnel. All index cards and printouts are filed in locked security cabinets.

RETENTION AND DISPOSAL:

Records are maintained at varying times depending on the type of information. The retention varies from two to six years, and then are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Installation Provost Marshal of activity concerned. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Provost Marshal of activity concerned. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Provost Marshal of activity concerned. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

Written requests for information should contain the full name of the individual, Social Security Number, date and place of birth.

For visits, the individual should report to Provost Marshal of the respective installations.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Military Police Blotters and Field Interview Card.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–27577 Filed 10–21–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Army

Revision of MTMC Freight Traffic Rules Publication No. 4A, Item 255 and MTMC Guaranteed Traffic Rules Publication No. 50, Item 715, both entitled ''Computation of Freight Charges''

AGENCY: Military Traffic Command, DOD.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command (MTMC), as the Department of Defense (DOD) Traffic Management for surface and surface intermodal traffic management services (DTR vol. 1, pg. 101–113), proposes modifying the text of the existing rule, entitled ''Computation of Freight Charges'', in MFTRP No. 4A, Item 255 and MGTRP No. 50, Item 715. The purpose of this modification is to change the basis of freight charge computation for bulk petroleum tank truck shipments from gross volume to a different methodology (sometimes referred to as ''net'' volume) in order to better conform to standard industry practice as well as to procedures and automated systems used or being implemented by the Defense Energy Support Center.

DATES: Comments must be submitted on or before December 21, 1999.

ADDRESSES: Comments may be sent as follows: by fax: 703–681–9871 attn: Jerome Colton, by e-mail: coltonj@mtmc.army.mil., by mail or courier to: Headquarters, Military Traffic Management Command, ATTN: MTOP-JF (Jerome Colton), Room 606, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: For additional information contact Mr. Jerome Colton at (703) 681–1417 or Mr. Keith Pladson at (703) 767–8381.

SUPPLEMENTARY INFORMATION: The proposed effective date for the change will be January 1, 2000. This charge may affect the amounts that bulk petroleum tank truck carriers are reimbursed for bulk petroleum shipments.

Paragraph 1 of the current regulations (MFTRP No. 4A, Item 255 and MGTRP No. 50, Item 715) both read: ''Except as provided below, freight charges in DOD tenders governed by this publication will be computed by multiplying the rate by the actual gallonage (uncorrected for temperature) placed in the vehicle at the time of loading or the minimum gallonage stated in carrier's tender, as applicable, whichever is greater''.

The proposed change would replace the existing text of both regulations with the following: ''Except as provided in paragraph 2, freight charges in DOD tenders governed by this publication will be the greater of:

a. the amount computed by multiplying the carrier's rate by the minimum gallonage stated in the carrier's applicable tender; or

b. the amount computed by multiplying the carrier's rate by the temperature-corrected gallonage placed in the vehicle at the time of loading. Temperature-corrected gallonage is defined as the volume correction to gallons at 60 degrees Fahrenheit (sometimes referred to as ''net volume'') and will be determined by the loading facility through either the use of temperature-compensating meters or by manual conservation in accordance with the appropriate tables in the most recent edition of the API Manual of Petroleum Measurement Standards (MPMS).''

(end of proposed change)

Regulatory Flexibility Act

This change is not considered rule making within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

Paperwork Reduction Act

The Paperwork Reduction Act, 44 USC 3051 *et seq.*, does not apply because no information collection requirement or recordkeeping responsibilities are imposed on offerors, contractors, or members of the public.

Thomas M. Ogles, Jr.,

Chief, Freight Services Division, Joint Traffic Management Office.

[FR Doc. 99–27633 Filed 10–21–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the

availability of the following U.S. patent for non-exclusive, partially exclusive or exclusive licensing. The listed patent has been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

This patent covers a wide variety of technical arts including: A Method To Extract TNT From High Explosives.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patent listed below in a non-exclusive, exclusive or partially party interested in manufacturing, using, and/or selling devices or exclusive manner to any processes covered by this patent.

Title: Method For Recovery And Separation of Trinitrotoluene By Supercritical Fluid Extraction.

Inventor: Jeffrey B. Morris.

Patent Number: 5,953,679.

Issued Date: September 14, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Rausa, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Aberdeen Proving Ground, MD 21005–5055, tel: (410) 278–5028; fax: (410) 278–5820.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–27634 Filed 10–21–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patent for non-exclusive, partially exclusive or exclusive licensing. The listed patent has been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

This patent covers a wide variety of technical arts including: A Vertical Cavity Surface Emitting Laser.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patent listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by this patent.

Title: Strain Induce Control Of Polarizations States In Vertical Cavity Surface Emitting Lasers And Method Of Making Same.

Inventors: Jagadeesh Pamulapati and Paul H. Shen.

Patent Number: 5,953,362.

Issued Date: September 14, 1999.

FOR FURTHER INFORMATION CONTACT: Norma Cammaratta, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Adelphia, MD 20783–1197 tel:(301) 394–2952; fax: (301) 394–5818.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–27635 Filed 10–21–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Army Corps of Engineers

Notice of Intent (NOI) To Prepare a Draft Environmental Impact Report and Supplemental Environmental Impact Statement (EIR/SEIS) for Proposed Modifications to the Guadalupe River Project, Downtown San Jose, CA

AGENCY: U.S. Army Corps of Engineers (Corps), Sacramento District, DOD.

ACTION: Notice of intent.

SUMMARY: The multiple purpose Guadalupe River Project (Project) is under phased construction in downtown San Jose, California. The Project was authorized by Section 401(b) of WRDA 1986 and amended by the Energy and Water Development Appropriations Act for Fiscal Year 1990 to provide flood protection, environmental protection, and recreation features. Portions of the Project have been completed or are ongoing under existing implementation authorities and environmental approvals. Project modifications are now required to protect species recently listed under the Endangered Species Act and to meet conditions for water quality certification under the Clean Water Act. Project modifications will likely include an underground bypass to convey flood waters around important riparian habitat, and changes to the existing mitigation and monitoring plan. The intent of the Draft EIR/SEIS is to describe and evaluate potential effects of these proposed modifications on environmental resources in the Project area. The integrated Draft EIR/SEIS will include sufficient information for compliance with both the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), as well as opportunities for public participation in the planning and decision making process. The lead agencies are the Corps and the Santa Clara Valley Water District (Water District).

DATES: A public scoping period will begin on October 22, 1999 and end on November 24, 1999. Public comment is invited on the proposal to modify the Project, the proposal to prepare the Draft EIR/SEIS, and on the scope of issues to be included in the Draft EIR/SEIS. Please submit any concerns by November 24, 1999 to the person identified below. Scoping meetings are tentatively scheduled for November 9 and 17, 1999 in San Jose. Concerned persons and organizations are invited to call or write to be included on the mailing list for these public meetings or to receive other correspondence concerning the proposed action.

- The scoping meeting on November 9 will be 7:00 to 9:30 p.m. at the Crown Plaza Hotel, 282 Almaden Boulevard, San Jose, California.
- The scoping meeting on November 17 will be 7:00 to 9:30 p.m. at the Santa Clara Valley Water District, 5750 Almaden Expressway, San Jose, California 95118.

FOR FURTHER INFORMATION CONTACT: Nina Bicknese, Environmental Specialist, U.S. Army Corps of Engineers, 1325 J Street, Sacramento, California, 95814–2922, phone : (916) 557–7948, or fax: (916) 557–5138, nbicknese@spk.usace.army.mil.

SUPPLEMENTARY INFORMATION:

1. Background

The Guadalupe River Flood Control Project is being implemented in phases along the Guadalupe river in downtown San Jose, Santa Clara County, California. The project was authorized by Section 401(b) of WRDA 1986 and amended by the Energy and Water Development Appropriations Act for Fiscal Year 1990 to provide flood protection, environmental protection, and recreation features. Project construction began in 1992. Construction of flood protection elements was stopped in 1996 for several reasons. Concerns developed regarding compliance with the conditions of the State Water Quality Certification under Section 401 of the Clean Water Act (CWA), the listing of the red-legged frog and

steelhead salmon under Section 7 of the Endangered Species Act (ESA), and receipt of a notice issued by three environmental groups stating their intent to sue under the citizen suit provision of the CWA. Implementation of mitigation elements have continued under existing approvals and in cooperation with concerned agencies.

In June 1997, concerned resource agency staff from the U.S. Fish and Wildlife Service (USFWS), California Department of Fish and Game (CDFG), National Marine Fisheries Service (NMFS), and the California State Water Resources Control Board (SWRCB) met with the Corps and the Water District to express their concerns about the then proposed mitigation measures for the project. Resultantly, the following priorities were identified by the resource agencies:

- Redesign the Project to avoid impacts and maximize on-site mitigation
- Maximize on-site revegetation to replace impacted Shaded Riverine Aquatic (SRA) cover
- Provide off-site mitigation to replace impacted SRA cover
- Provide fisheries mitigation
- Provide thermal mitigation

Twenty-one mitigation issues were identified and options were evaluated. In December 1997, the Corps and the Water District joined with the City of San Jose (City) and the San Jose Redevelopment Agency (SJRA) to initiate a collaborative and facilitated program to resolve mitigation disputes among the resource agencies, project sponsors, and litigants in the threatened 1996 lawsuit.

In July 1998, this collaborative ratified a Dispute Resolution Memorandum (DRM) which required the Corps and The Water District to reevaluate a portion of the project, referred to as Contracts 3A and 3B reaches, to avoid impacting remaining riparian and aquatic habitat in the those reaches. Concurrently, the Corps determined the environmental impacts associated with the Project's remaining phases could not be adequately mitigated to maintain Project compliance with the ESA and CWA. The Corps concluded that an General Reevaluation Report (GRR) should be developed.

Since October 1998, the Corps and The Water District (lead agencies) have been further refining objectives and alternatives in coordination with concerned environmental regulatory agencies and the collaborative to develop proposed project modifications to satisfy the CWA and (ESA) concerns.

Study Area Location

The Guadalupe River, located primarily in the City of San Jose, south of San Francisco Bay, drains an area of about 160 square miles into the Bay. The primary project area is located along 2.6 miles of the Guadalupe River in downtown San Jose, between Grant Street, just upstream from Interstate-280, and Interstate-880. In addition, two off-site mitigation areas are proposed, one along Reach A downstream of the Project area and the other along lower Guadalupe Creek above its confluence with Alamitos Creek (Figure 1–1).

2. Document Scope

This pending Draft EIR/SEIS was preceded by a series of documents concerning the authorized Project that were prepared and processed in compliance with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). To address the proposed Project modifications, the Corps will produce one document which integrates the combined NEPA and CEQA environmental document with the General Reevaluation Report required by the corps. The purpose of the integrated GRR–EIR/SEIS is to develop and assess a modified recommended plan and to develop and assess alternatives for the remaining project which avoid and mitigate for adverse effects on environmental resources. This document will address new information, alternative plans, potential effects, and benefits and costs related to compliance with conditions for water quality certification and ESA.

The GRR–EIR/SEIS will describe and evaluate the potential effects of proposed modifications to the Guadalupe River Project (Project) in downtown San Jose. It will support decision making by the Corps and Santa Clara Valley Water District to implement the proposed Project modifications and ensure compliance with the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA). Potential direct and indirect environmental, social, and economic effects of the alternatives will be evaluated, a plan recommended for implementation, and details presented on the Federal and non-Federal participation needed to implement the recommended plan.

3. Development and Evaluation of Alternative Plans for Project Modifications

The following primary objectives were developed by the study team and collaborative members through an iterative process, and were used to develop alternative plans for project modifications.

- Reduce flood damage from the Guadalupe River in downtown San Jose by conveying flood flows up to the estimated 100-year flood event through the project area.
- Avoid and mitigate for potential adverse impacts to fish and wildlife habitat using the opportunities associated with construction of the flood control components, with special emphasis on potential restoration of the remnant chinook salmon and steelhead trout fisheries.
- Be consistent with redevelopment plans adjacent to the Guadalupe River in downtown San Jose through integration with the Guadalupe River Park and Gardens Master Plan and downtown redevelopment plans with preservation of historic and cultural resources.
- Provide recreation elements compatible with local recreation plans and the General Design Memorandum.
- Provide for a minimum, undiverted flow of 1,500 cfs throughout the bypass reach to accommodate fish and wildlife concerns.
- Provide invert stabilization in the bypass reaches where the natural river remains to preserve the existing vegetation and proposed mitigation and to provide fish passage.
- Design the Project so that it will not cause elevated water temperature or other Project impacts which harm anadromous fish species or other beneficial uses during Project construction and over the entire Project life, including the transition period before replacement vegetation matures.
- Design the Project for successful migration of anadromous fish through the Project area, including armored channel invert sections of the Project.
- Replace the same quantity and quality of anadromous fish habitat, including spawning and rearing habitat, as was present prior to Project construction.

4. Evaluation Criteria and Range of Alternatives

Development of alternatives plans was initiated with the goal to consider all feasible measures to achieve the planning objectives plus criteria of effectiveness, efficiency, completeness, acceptability. Equal consideration was given to the objectives of alleviating the flooding problem; avoiding and/or mitigating for potential adverse impacts to fish and wildlife habitats; and providing recreation opportunities and public access consistent with local

redevelopment and recreation master plans in and adjacent to the Guadalupe River in downtown San Jose. These measures were analyzed to determine their applicability and overall feasibility in the study area. Subsequently, the management measures that were considered to be appropriate to address the flooding, environmental, and recreation issues, were assembled into an array of alternative plans for project modifications. These alternatives were progressively screened and refined throughout the planning process until a set of final candidate plans was set as a basis for selection of a recommended plan. The results indicated that only the triple bypass alternatives were able to meet both the hydraulic and environmental mitigation criteria.

5. Alternatives Considered

As part of the planning process, many alternatives were considered prior to the preparation of the General Design Memorandum. Development of alternatives plans for project modification was initiated with the goal to consider all feasible measures to achieve the planning objectives plus criteria of effectiveness, efficiency, completeness, acceptability. Equal consideration was given to the objectives of alleviating the flooding problem; avoiding and/or mitigating for potential adverse impacts to fish and wildlife habitats; and providing recreation opportunity and public access consistent with local redevelopment and recreation master plans in and adjacent to the Guadalupe River in downtown San Jose. These measures were analyzed to determine their applicability and overall feasibility in the study area. Subsequently, the management measures that were considered to be appropriate to address the flooding, environmental, and recreation issues, were assembled into an array of alternative plans for project modifications.

While the Draft EIR/SEIS will address an array of alternatives considered, only two feasible alternatives remain for detailed analysis in the document after completion of a rigorous and iterative screening process. Except for the no action alternative, all alternatives were developed to provide the authorized 100-year flood protection. The no action alterative would be to complete mitigation plantings for Contracts 1, 2, and 3C reaches under existing approvals, but do no further construction on the Contract 3A and 3B reaches of the authorized project. The ''cured'' alternative would be to add additional mitigation to the authorized project to meet all concerns, but it is not implementable because there is insufficient area for all required mitigation. Channel widening and upstream detention alternatives were found to be engineeringly and/or economically infeasible. A number of bypass systems were evaluated in order to leave as much of the natural stream channel as possible, minimize impacts on riparian resources, and provide adequate environmental mitigation. The final two alternatives to be included in detail in the Draft EIS/SEIS are the no action and the underground bypass system alternative with three conduits, plus inlet and outlet structures, low flow channel, and mitigation measures.

6. Proposed Action

The Bypass System Alternative has been proposed to avoid or minimize impacts on riparian resources and protected fish and wildlife species that occur within the Contracts 3A and 3B reach of the Guadalupe River. Specially, this alternative would reduce the amount of riparian vegetation and SRA cover that would be affected while meeting the purpose of providing 100–year flood protection to downtown San Jose and vicinity. Project modifications include a bypass system, bank and invert armoring, and gradient control structures.

To reduce flooding, the bypass system would route flood flows from the natural river channel into the underground structures and discharges further downstream where there is greater channel capacity to pass flood flows. The underground bypass system will have three independent conduits with different inlet and outlet locations. Inlets for two of the structures will be located on the Guadalupe River upstream of the West Santa Clara Street bridge, and the inlet for the third structure will be located on the Guadalupe River downstream of the confluence with Los Gatos Creek. The outlets for two of the structures will be located on the Guadalupe River upstream of the Coleman Avenue Bridge. The third outlet will be constructed on the Guadalupe River downstream of the Coleman Avenue bridge.

Although the underground bypass minimizes effect on vegetation by eliminating most of the bank armoring originally proposed for this section of the river under the Project, some armoring is still required in association with the construction of inlets and outlets. Under the existing Project, most of the river bank and invert in Contracts 3A and 3B was proposed to be armored. The proposed bypass system will minimize river bank and invert armoring.

Bank and Invert Armoring

Although the underground bypass minimizes effects on vegetation by eliminating most of the armoring originally proposed under the existing Project for this reach of the river, some armoring is still required, including armoring associated with the inlets described above. The east and west banks and the river invert will be armored for approximately 609 feet at the downstream end of Contract 3A (under and upstream of the Coleman Avenue bridge), and for approximately 1,891 feet in Contract 3B (under the Park Avenue bridge to downstream of the West Santa Clara Street bridge). The channel invert in Contract 3B will also be armored for approximately 300 feet downstream of the Los Gatos Creek confluence, where an inlet is proposed. Wherever the natural channel invert is armored, a low-flow channel will be constructed in the armored section to provide fish passage through the area. Additionally, the east bank will be armored from the West Santa Clara Street bridge to approximately 50 feet downstream of the New Julian Street bridge. The extent of channel invert and bank armoring may be less, depending on the final design of the triple bypass system.

Stream Channel Invert Gradient Control Structures

Gradient control structures may be placed in the invert of the stream channel throughout the bypassed section of the river. The purpose of the gradient control structures is to stabilize ongoing bank erosion and channel incision, increase instream cover, and provide improved fish habitat.

Location and Description of Project Compensatory Mitigation Components

Compensatory mitigation components of the Project will be located at onsite and offsite areas. Onsite areas are located in Contracts 1, 2, 3A, and 3B reaches an the Woz Way-Park Avenue Bypass Reach. Compensatory mitigation plantings in onsite areas were maximized prior to using offsite areas. Offsite compensatory mitigation areas include Research A (located along the Guadalupe River between Airport Parkway and I–880) and lower Guadalupe Creek (a tributary to the Guadalupe River). Other compensatory measures include protecting or improving riparian vegetation, SRA cover, and anadromous fish habitat (*i.e.*, water temperature, spawning gravel, passage, and fish habitat diversity).

7. Possible Environmental Effects

Based on the available information collected and analyzed to date, significant effects will be avoided or will be minimized by implementing the environmental commitments specified in the proposed action. The resources for which potential adverse effects were identified include river geomorphology, biological resources, air quality, transportation and traffic, hazardous materials, and cultural resources.

- River Geomorphology. Operation of the Project could result in changes in river geomorphology in the reaches of the Guadalupe River included in the Project. Post-project monitoring would focus on channel incision. If monitoring indicates a substantial increase in incision, measures would be implemented to address this issue, such as constructing additional invert stabilization structures.
- Biological Resources. Construction of the Project would require removal of SRA cover and disturbance of the river channel. These activities could result in adverse effects on fish habitat during and after construction. Anadromous fish evaluated are steelhead, which is listed as threatened under the Endangered Species Act, and chinook salmon. Effects on fish and fish habitat during construction will be minimized by restricting in-water construction to summer low-flow periods, by ensuring that activities that divert flow would not restrict fish passage, and by implementing measures to control spills and erosion. Effects on SRA cover and associated increases in water temperature, loss of spawning gravel, and fish passage would be addressed by onsite and offsite mitigation planting, replacing and maintaining spawning gravels, replacing rearing habitat, and providing for fish passage through armored sections of the Project.
- Air Quality. Earthmoving associated with constructing the Bypass Alternative could result in increased PM10 emissions. This effect would be addressed by implementing the Bay Area Air Quality Management District's feasible control measures for soil removal activities.
- Transportation and Traffic. Project construction could result in a temporary short-term loss in available parking in the Project area. This temporary loss would be offset by providing offsite parking during construction and running a shuttle service to and from the offsite parking lots and an office park being constructed in the Project area.
- Cultural Resources. Unknown cultural resources could be discovered during Project construction. This potential effect will be addressed by monitoring during ground-disturbing activities and evaluating the significance of any cultural resources found during construction.
- Other Resources. Studies to date have concluded that the proposed action (modified project with mitigation commitments) would either not affect certain resource areas or that the effect on these resource areas attributable to the Project would not be considered significant. These resources are land use, recreation, public access, visual resources, agriculture, minerals, population and housing, and public services and utilities. The Draft GRR–EIR/SEIS will describe and evaluate potential effects and will be available for public review and comment.

8. Proposed Scoping Process

a. This Notice of Intent initiates the scoping process whereby the Corps and the Water District will refine the scope of issues to be addressed in the Draft GRR–EIR/SEIS and identify potential significant environmental issues related to the proposed action.

b. Public comment is invited on the proposal to prepare the Draft GRR–EIR/SEIS and on the scope of issues to be included therein.

c. The Corps and Water District will consult, local, State and Federal agencies with regulatory or implementation responsibility for, or expertise with, the resources in the area of investigation. These include, but are not limited to, U.S. Fish and Wildlife Service, National Marine Fisheries Service, and U.S. Environmental Protection Agency, the State Historic Preservation Officer, California Department of Fish and Game, California Environmental Protection Agency, State and Regional Water Quality Control Boards, California Department of Transportation; and the City of San Jose and San Jose Redevelopment Agency.

d. Meetings with interested persons will be held during the scoping period and after release of the Draft GRR–EIR/SEIS. Coordination with Federal and State agencies, Tribal governments, and local governments will occur throughout the entire process as necessary.

e. In November 1999, scoping workshops will be held in the community to explain the Notice of Intent and the Notice of Preparation, and to solicit suggestions, recommendations, and comments to help refine the issues, measures, and alternatives to be addressed in the Draft GRR–EIR/SEIS. Specific locations, dates, and times of the meeting(s) will be published in local newspaper(s) or other media, and be provided to those persons receiving this Notice and those that may call or write after seeing a published version.

f. A 45-day public review period will be provided for public review and comment on the Draft GRR–EIR/SEIS. All interested persons should respond to this notice and provide a current address if they wish to be notified of the Draft GRR–EIR/SEIS. A 30-day public review period will be provided for review and comment on the Final GRR–EIR/SEIS.

9. Availability

- The Draft GRR–EIR/SEIS is expected to be available for a 45-day public review and comment period in early 2000.
- The Final GRR–EIR/SEIS is expected to be available for a 30-day review period in late 2000.

10. Commenting

A Draft GRR–EIR/SEIS is expected to be available for public review and comment in early 2000 and a final GRR–EIR/SEIS in late 2000. The comment period on the Draft GRR–EIR/SEIS will be 45 days from the date of availability published in the **Federal Register** by the Environmental Protection Agency. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered. Please provide any comments to the person identified on the first page of this notice. Pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Corps will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without the name and address.

11. Coordination With Concerned Agencies

The Corps and The Water District as the lead Federal and State agencies with responsibility to prepare this GRR–EIR/

SEIS, will cooperate and consult with concerned agencies, the Collaborative, and those on the Executive Committee for this project. The Environmental Protection Agency and Fish and Wildlife Service have regulatory responsibilities that could not efficiently be considered without direct involvement; guidance regarding formal consultation responsibilities under the Endangered Species Act will be provided by a Fish and Wildlife Service specialist who will participate as a member of the interdisciplinary team. Other agencies, local and county governments will also be invited to participate, as appropriate.

12. List of Public and Private Persons/ Agencies Notified

A list of persons and agencies notified is available upon request to the person identified on the first page of this notice.

13. Decisions To Be Made and Responsible Officials

The Commander, Sacramento District is the official responsible for compliance with NEPA for actions within the District's boundaries. The Santa Clara Valley Water District Board of Directors is responsible for CEQA compliance for the proposed action. After completion of review, the Chief of Engineers will sign his final report and transmit the report and accompanying documents to the Assistant Secretary of the Army for Civil Works (ASA(CW)). After review, ASA(CW) will transmit the report to the Office of Management and Budget (OMB) requesting its views in relation to the programs of the President. After OMB provides its views, ASA(CW) will sign the record of decision (ROD) and transmit the report to Congress. The responsible officials for respective NEPA and CEQA compliance are: COL Michael Walsh, District Engineer, Sacramento District, U.S. Army Corps of Engineers, 1325 J Street, Sacramento, CA 95814–2922; Mr. Stanley Williams, Santa Clara Valley Water District, 5750 Almaden Expressway, San Jose, CA 95118.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–27636 Filed 10–21–99; 8:45 am]

BILLING CODE 3710–EZ–M

DEPARTMENT OF DEFENSE

Department of the Army; Army Corps of Engineers

Intent To Prepare a Draft Programmatic Environmental Impact Statement (PEIS) for Proposed Hurricane and Wetland Protection in Terrebonne and Lafourche Parishes, LA, a Component of the Morganza, LA, to the Gulf of Mexico Feasibility Study

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the U.S. Army Corps of Engineers (COE) will prepare a draft Programmatic Environmental Impact Statement (PEIS) to analyze the direct, indirect, and cumulative beneficial and adverse impacts of implementing a hurricane protection project in Terrebonne Parish, Louisiana. The purposes of the proposed action are to provide protection to existing development from tropical storm and hurricane-induced tidal flooding such as that which occurred during Hurricane Andrew and to protect coastal wetlands from hurricane surges in a portion of Terrebonne Parish, Louisiana. The proposed action would consist of: (1) Upgrading many existing forced drainage system levees; (2) using permitted and/or installed flood-control features (e.g., floodgates); (3) constructing some new levees and water-control structures; and, (4) closing the water-control structures and flood gates in a coordinated manner in the event of tropical storm or hurricane-induced tidal surges.

FOR FURTHER INFORMATION CONTACT: Questions regarding the PEIS may be directed to Mr. Robert Martinson, CEMVN–PM–RS, U.S. Army Corps of Engineers, P.O. Box 60267, New Orleans, Louisiana 70160–0267, telephone: (504) 862–2582.

Questions regarding the proposed action may be directed to Mr. Rodney Greenup, CEMVN–PM–W, U.S. Army Corps of Engineers, P.O. Box 60267, New Orleans, Louisiana 70160–0267, telephone: (504) 862–2613.

SUPPLEMENTARY INFORMATION: A hurricane protection plan was proposed by the South Terrebonne Tidewater Management and Conservation District (STTMCD). A Notice of Intent to prepare an EIS for the STTMCD plan, under the COE Regulatory Program, was issued on April 7, 1993 (Volume 58, Number 65, pp. 18084–18085). Subsequent to this, the COE was authorized to begin a study of a similar plan. Because the underlying purposes of the plans were the same and in the interest of cost effectiveness, the COE decided to prepare one EIS to address both initiatives, rather than two separate EISs. A Notice of Intent, announcing this decision, was issued in the **Federal Register** on September 8, 1995.

The COE and its cost-share partner, the Louisiana Department of Transportation and Development, have determined that a full accounting of all the details on the proposed hurricane protection system, in the feasibility phase of project planning, will be extremely difficult. The COE came to this conclusion because of the study area's large size, its remote location, and the hydraulic complexity of developing a hurricane protection system with numerous openings for navigation and the natural environment. Therefore, the COE has decided, in conjunction with its cost-share partner, to address a hurricane protection system, programmatically, and to determine if the construction of the entire system is feasible. If such a system is deemed feasible, then as the details for each component (*e.g.*, Houma Navigation Canal lock, levee alignment/placement) of the system become definitive during the detailed design phase, additional NEPA compliance would be achieved for each component. Each of the component NEPA documents would be presented in the context of the PEIS, which will provide an evaluation of the overall environmental impacts of such a system and present a mitigation plan for unavoidable impacts of the entire system.

Proposed Action

The proposed action would consist of: (1) Upgrading many existing forced-drainage system levees from near Larose at the eastern end of Theriot on the western end; (2) using permitted and/or installed flood-control features (e.g., floodgates) in the area; (3) constructing new levees and environmental water-control structures; and, (4) closing the water-control structures and flood gates, in a coordinated manner, in the event of tropical storm or hurricane-induced tidal surges. The flood gates and water-control structures would normally be left open for navigational and tidal ingress and egress. Several communities, including the City of Houma, Dulac, Cauvin, and Montegut, would receive protection from the proposed action.

Alternatives

The no-action alternative must be evaluated. Additionally, several levee alignments around the Lake Beudreaux area will be evaluated, including the STTMCD plan. Non-structural solutions for protecting existing development also will be evaluated.

On May 12, 1993, the COE held a formal NEPA scoping meeting at Houma, Louisiana, for the previously-announced regulatory EIS. Fifty-two individuals registered at the meeting. Questions and issues of concern were solicited at the meeting, and a summary of the results was made available to participants on April 12, 1994. One of the main areas of concern brought out during the 1993 scoping meeting was potential impacts to Lake Boudreaux, its surrounding marshes, and the associated marine organisms. Additional meetings will be held, with local interests from the various bayou areas, and with the various affected Federal and state agencies.

The COE does not plan to hold additional formal NEPA scoping meetings, but meetings will continue to be held throughout the planning process, as discussed above.

A draft PEIS is scheduled to be available for public review during March 2000.

Thomas F. Julich,

Colonel, U.S. Army District Engineer.

[FR Doc. 99–27637 Filed 10–21–99; 8:45 am]

BILLING CODE 3710–84–M

DEPARTMENT OF DEFENSE

Department of the Navy

Open Meeting of the Naval Research Advisory Committee

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Naval Research Advisory Committee (NRAC) Panel on Commercial Science and Technology will meet to review and assess European intermediate to long-term commercial Science and Technology investment strategy in areas related to Department of the Navy dependence upon commercial off-the-shelf products, in an effort to identify mutually beneficial opportunities for Department of the Navy Science and Technology collaboration with commercial industrial sectors. All sessions of the meeting will be open to the public.

DATES: The meeting will be held on Monday, November 15, 1999, from 8:30 a.m. to 4:00 p.m.; and on Tuesday, November 16, 1999, from 8:30 a.m. to 3:00 p.m.

ADDRESSES: The meeting will be held at the Jorge Scientific Corporation, 1225 Jefferson Davis Highway, 6th Floor, Suite 600, Crystal Gateway Two, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Diane Mason-Muir, Program Director, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, telephone number: (703) 696–6769.

Dated: October 13, 1999.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 99–27591 Filed 10–21–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.250A]

Vocational Rehabilitation Service Projects for American Indians With Disabilities

Notice inviting applications for new awards for fiscal year (FY) 2000.

Purpose of Program: To provide vocational rehabilitation services to American Indians with disabilities who reside on or near Federal or State reservations, consistent with their individual strengths, resources, priorities, concerns, abilities, capabilities, and informed choices, so that they may prepare for and engage in gainful employment, including self-employment, telecommuting, or business ownership.

Eligible Applicants: Applications may be submitted only by the governing bodies of Indian tribes (and consortia of those governing bodies) located on Federal or State reservations.

Deadline for Transmittal of Applications: April 21, 2000.

Applications Available: October 22, 1999.

Available Funds: $9,242,660.

Estimated Range of Awards: $250,000–$325,000.

Estimated Average Size of Awards: $290,000.

Estimated Number of Awards: 27–28.

Note: The Department 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 75, 77, 80, 81, and 82; and (b) The regulations for this program in 34 CFR parts 369 and 371.

Priority

Under section 121(b)(4) of the Rehabilitation Act of 1973, as amended, the Secretary gives preference to applications that meet the following competitive priority. Under 34 CFR 74.105(c)(2)(i) the Secretary awards 10 points to an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria:

Competitive Preference Priority—Continuation of Previously Funded Tribal Programs

In making new awards under this program, the Secretary gives priority consideration to applications for the continuation of tribal programs that have been funded under this program.

Selection Criteria: In evaluating an application for a new grant under this competition, the Secretary uses selection criteria chosen from the general selection criteria in 34 CFR 75.210 of EDGAR. The selection criteria to be used for this competition will be provided in the application package for this competition.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its Web site (http://www.ed.gov/pubs/edpubs.html) or its E-mail address (edpubs@inet.ed.gov). If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.250A.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8351. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Pamela Martin or Alfreda Reeves, U.S. Department of Education, 400 Maryland Avenue, SW., room 3314, Switzer Building, Washington, DC 20202–2650. Telephone (202) 205–8494 or (202) 205–9361. If you use a telecommunications device for the deaf (TDD), you may call

the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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 persons listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet 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 (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.html

Program Authority: 29 U.S.C. 773(b).

Dated: October 18, 1999.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–27621 Filed 10–21–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 99–60–NG, et al.]

Star Natural Gas Company; Orders Granting, Amending and Vacating Authorizations To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued Orders granting, amending and vacating natural gas import and export authorizations. These Orders are summarized in the attached appendix.

These Orders may be found on the FE web site at http://www.fe.doe.gov., or on the electronic bulletin board at (202) 586–7853.

They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, 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 October 18, 1999.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

APPENDIX.—ORDERS GRANTING, AMENDING AND VACATING IMPORT/EXPORT AUTHORIZATIONS

[DOE/FE authority]

Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
1151	9–1–99	Star Natural Gas Company, 99–60–NG.	10.95 Bcf		Import and export up to a combined total from and to Canada beginning on November 1, 1999, and extending through October 31, 2001.
1512	9–1–99	Aquila Canada Corp., 99–61–NG	200 Bcf		Import from Canada over a two-year term beginning on the date of first delivery.
1376–A	9–8–99	Alcoa, Inc. (Formerly Aluminum Company of America), 98–28–NG.			Name change.
1513	9–13–99	Dynegy Marketing and Trade (Formerly Natural Gas Clearinghouse), 99–63–NG.	600 Bcf	300 Bcf	Import combined total from Canada and Mexico, and export a combined total to Canada and Mexico beginning on October 31, 1999, and extending through October 30, 2000.
1514	9–14–99	Cinergy marketing & Trading, LLC, 99–64–NG.	365 Bcf		Import and export a combined total from and to Mexico beginning on November 1, 1999, and extending through October 31, 2001.
1515	9–20–99	Portland General Electric Company 99–65–NG.	90 Bcf		Import from Canada beginning on November 3, 1999, and extending through November 2, 2001.
1033–A	9–20–99	PG Energy Inc. (Successor to Pennsylvania Gas and Water Co.), 95–01–99.			Vacate long–term import authority.
1516	9–21–99	Pacific Gas and Electric Company Core Procurement Department, 99–62–NG.	600 Bcf		Import from Canada beginning on November 1, 1999, and extending through October 31, 2001.
1517	9–23–99	Avista Energy, Inc., 99–66–NG	269 Bcf		Import from Canada over a two year term beginning on the date of first delivery.

[FR Doc. 99–27672 Filed 10–21–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER93–150–014 and EL93–10–008]

Boston Edison Company; Notice of Filing

October 18, 1999.

Take notice that on October 5, 1999, Boston Edison Company of Boston, Massachusetts tendered for filing its report in compliance with the Commission's orders in its Opinion No. 411, 77 FERC ¶ 61,272 (1996) and Opinion No. 411–A (88 FERC ¶ 61,267 (1999).

Boston Edison states that a copy of the report was submitted to all parties in the proceeding as well as parties to Docket Nos. ER86–645–000, *et al.* and Docket Nos. EL99–180–000, *et al.*

Any person desiring to be heard or to protest such 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 385.214). All such motions and protests should be filed on or before October 28, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–27618 Filed 10–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. UL96–16–000 and UL96–17–000]

Chippewa-Flambeau Improvement Company; Notice of Availability of Discussion of Effects From Operation of Rest Lake and Turtle-Flambeau Reservoir on Downstream Hydroelectric Projects Report

October 18, 1999.

Take notice that the revised September 1996 report, ''Discussion Of Effects From Operation Of Rest Lake and Turtle-Flambeau Reservoir On Downstream Hydropower Projects'' is available for review and comments.

A copy of the report is available for inspection and comments in the Public Reference Room at the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Comments are to be filed on or before November 15, 1999. All documents (original and eight copies) should be filed with David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please include the docket number(s) (UL96–16 and UL96–17) on any comments filed.

David P. Boergers,

Secretary.

[FR Doc. 99–27617 Filed 10–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–21–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 18, 1999.

Take notice that on October 18, 1999, CNG Transmission Corporation (CNG), filed as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets proposing two new rate schedules, Rate Schedules DPO and CSC, together with related changes. CNG requests an effective date of November 15, 1999, for these proposed tariff sheets.

CNG states that the purpose of its filing is propose two new rate schedules designed to allow CNG and its shippers to better serve an unbundled retail market. The Delivery Point Operator or DPO service is designed to give local distribution companies (LDCs) and potentially others that operate physical points of interconnection between CNG and the LDC system (the citygate) the ability to meet any swings in demand or supply at the citygate without the necessity that the LDC itself continue to hold contract service rights sufficient to absorb the level of potential swings. The Citygate Swing Customer (CSC) Service is a companion service to the Rate Schedule DPO service. It gives shippers that are not delivery point operators the flexibility to match their deliveries into CNG's system with their receipts from CNG without being subject to imbalance penalties or other costs that otherwise would be barriers to entry of these shippers into the small-customer retail market—where seasonal, daily and hourly load variations are significant and commonplace.

CNG states that other, related tariff changes are also proposed. CNG proposes to modify Section 6.3 of its General Terms and Conditions to include references to the new services. Rate Schedules FT, IT and MCS (Wheeling) are modified to provide for explicit hourly flow limits. CNG states that it has also made changes to the intra-day nomination requirements under its tariff.

CNG states that copies of its filing have been served upon CNG's customers and interested state commissions. CNG also states that copies of this filing are available for public inspection during regular business hours, at CNG's principal offices in Clarksburg, West Virginia.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–27613 Filed 10–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2597–023 and 2576–018]

Connecticut Light and Power Co.; Notice of Extension of Time

October 18, 1999.

On September 15, 1999, the United States Federal Energy Regulation Commission (FERC) issued a notice of Connecticut Light and Power Company's (CL&P), filing of application and soliciting additional study requests, to be filed by November 1, 1999, for the Housatonic and Falls Village projects. On September 25, 1999, the Appalachian Mountain Club (AMC) filed a request to extend the deadline to December 1, 1999. AMC's request states there were delays in getting copies of the License Application from CL&P, and that more review time is needed.

Upon consideration, notice is hereby given that the deadline for filing requests for additional studies is extended to December 1, 1999.

David P. Boergers,

Secretary.

[FR Doc. 99–27620 Filed 10–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–22–000]

Mississippi River Transmission Corporation; Notice of Proposed Changes to FERC Gas Tariff

October 18, 1999.

Take notice that on October 12, 1999, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 (Tariff), the following tariff sheets to become effective November 11, 1999:

Second Revised Sheet No. 226
Original Sheet No. 226A

These tariff sheets would provide for generic types of discounts that may be agreed to by MRT and a shipper.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person desiring to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–27610 Filed 10–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–474–001]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

October 18, 1999.

Take notice that on October 12, 1999, Natural Gas Pipeline Company of America (Natural), tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets to be effective October 1, 1999.

Natural states that the purpose of this filing is to comply with the Commission's Order issued September 30, 1999 at Docket No. RP99–474–000 (September 30th Order).

Natural requests waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets submitted to become effective October 1, 1999, consistent with the September 30th Order.

Natural states that copies of the filing are being mailed to its customers, interested state regulatory agencies and all parties set out on the official service list at Docket No. RP99–474.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–27612 Filed 10–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–1096–000, EL98–24–000, OA96–27–000, ER95–1468–000 and ER94–1348–000]

Southern Company Services, Inc., Notice of Extension of Time

October 18, 1999.

On October 7, 1999, Southern Company Services, Inc. (Southern Company) filed a motion for an extension of time to make refunds as required by the Commission's letter order issued September 17, 1999, in the above-docketed proceeding. In its motion, Southern Company states that because of the tremendous number of transmission transactions which must be reviewed and the press of other business involving company personnel, additional time is needed to calculate and make refunds pursuant to the Commission's order.

Upon consideration, notice is hereby given that an extension of time for making refunds is granted to and including December 2, 1999. A refund report should be filed within fifteen days after making the refunds.

David P. Boergers,

Secretary.

[FR Doc. 99–27642 Filed 10–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–23–000]

Southern Natural Gas Company, South Georgia Natural Gas Company, Sea Robin Pipeline Company and Destin Pipeline Company, L.L.C.; Notice of Petition for Waiver

October 18, 1999.

Take notice that on October 12, 1999, Southern Natural Gas Company, South Georgia Natural Gas Company, Sea Robin Pipeline Company, and Destin Pipeline Company, L.L.C., (the Southern Pipelines) filed a petition for limited waiver of the Commission's Regulations and the nomination and capacity release procedures set forth in their respective Tariffs in order to waive certain nomination cycles and capacity release deadlines during the Y2K rollover period. The Southern Pipelines request waiver of such provisions in order to minimize business disruptions and promote stability of their regular business transactions on and after January 1, 2000.

The Southern Pipelines state that copies of the filing have been mailed to all of the shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims/htm. (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–27611 Filed 10–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3307–000 and EL99–70–000]

United Power, Inc.; Notice of Issuance of Order

October 19, 1999.

United Power, Inc. (United Power) is an electric membership cooperative corporation providing primarily retail electric service in Colorado to residential, commercial, and industrial customers. On June 8, 1999, United Power filed a request for waiver of the requirements of Order Nos. 888 and 889. United Power also requested certain additional waivers and authorizations. In particular, United Power requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by United Power. On October 13, 1999, the Commission issued an Order Granting Request For Waivers Of Order Nos. 888 and 889, Addressing Requests For Other Waivers And Accepting Agreements For Filing (Order), in the above-docketed proceedings.

The Commission's October 13, 1999 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (F):

(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 United Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, United Power is hereby authorized to issue securities and assume obligations and liabilities as guarantor, endorser, 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 United Power, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) Until further order of this Commission, the full requirements of Part 45 of the Commission's regulations are hereby waived with respect to any person now holding or who may hold an otherwise proscribed interlocking directorate involving United Power * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 12, 1999.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/*online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–27641 Filed 10–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–9–000, et al.]

UtiliCorp United Inc. and Allegheny Energy, Inc., et al.; Electric Rate and Corporate Regulation Filings

October 15, 1999.

Take notice that the following filings have been made with the Commission:

1. UtiliCorp United Inc. and Allegheny Energy, Inc.

[Docket No. EC00–9–000]

Take notice that on October 8, 1999, UtiliCorp United Inc. (UtiliCorp) and Allegheny Energy, Inc., for and on behalf of Monongahela Power Company, doing business as Allegheny Power, (Allegheny Power or Mon Power) (together, Applicants), filed with the Commission an application pursuant to Section 203 of the Federal Power Act requesting authority for UtiliCorp to sell and transfer the jurisdictional facilities of UtiliCorp's West Virginia Power division to Allegheny Power. Applicants request that the Commission consider and grant the application on an expedited basis, issuing an order approving the transaction by no later than December 1, 1999.

Comment date: November 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Kansas Gas and Electric Company

[Docket No. EC00–10–000]

Take notice that on October 8, 1999, Kansas Gas and Electric Company (KGE) submitted for filing an application associated with the sale of KGE's 69 kV line, which starts at KGE's Tioga substation and ends at Plummer Street, to the City of Chanute, Kansas (Chanute), a municipal corporation of Kansas.

Comment date: November 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Kern Front Cogen, Inc.

[Docket No. QF86–302–003]

Take notice that on October 13, 1999, Kern Front Cogen, Inc., 1000 Louisiana, Suite 5800, Houston, Texas 77002, filed with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying cogeneration facility pursuant to Sections 292.207 (b) and (d)(2) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The Commission previously certified the facility as a qualifying cogeneration facility on February 7, 1986 in Docket No. QF86–302–000. The Facility was self-recertified in Docket Nos. QF86–302–001 and QF86–302–002. Recertification is sought to reflect the divestiture of certain upstream ownership interests in the facility and a change in status of such owner.

Comment date: November 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Double "C" Cogen, Inc.

[Docket No. QF86–441–003]

Take notice that on October 12, 1999, Double "C" Cogen, Inc., 1000 Louisiana, Suite 5800, Houston, Texas 77002, filed with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying cogeneration facility pursuant to Sections 292.207(b) and (d)(2) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The Commission previously certified the facility as a qualifying cogeneration facility on April 9, 1986 in Docket No. QF86–441–000. The Facility was self-recertified in Docket Nos. QF86–441–001 and QF86–441–002. Recertification is sought to reflect the divestiture of certain upstream ownership interests in the facility and a change in status of such owner.

Comment date: November 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. FortisUS Energy Corporation

[Docket No. QF86–515–002]

Take notice that on October 13, 1999, FortisUS Energy Corporation, c/o Dewey Ballantine LLP, 1301 Avenue of the Americas, New York, NY, 10019, filed with the Federal Energy Regulatory Commission (Commission), an application for the Moose River Project (the Facility) to be recertified as a qualifying small power production facility pursuant to Sections 292.207 (b) and (d)(2) of the Commission's regulations. The request for recertification reflects a change in the ownership of the Facility.

The Facility is a run-of-river hydroelectric project located in the town of Lyonsdale, Lewis County, New York.

Comment date: November 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Live Oak Cogen, Inc.

[Docket No. QF87–133–003]

Take notice that on October 13, 1999, Live Oak Cogen, Inc., 1000 Louisiana, Suite 5800, Houston, Texas 77002, filed with the Federal Energy Regulatory Commission an application for recertification of its facility as a qualifying cogeneration facility pursuant to Sections 292.207 (b) and (d)(2) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The Commission previously certified the facility as a qualifying cogeneration facility on March 23, 1987 in Docket No. QF87–133–000. The Facility was self-recertified in Docket Nos. QF87–133–001 and QF87–133–002. Recertification is sought to reflect the divestiture of certain upstream ownership interests in the facility and a change in status of such owner.

Comment date: November 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Ormet Primary Aluminum Corporation v. American Electric Power Service Corporation

[Docket No. EL00–6–000]

Take notice that on October 13, 1999, Ormet Primary Aluminum Corporation (Ormet), tendered for filing a complaint of Ormet Primary Aluminum Corporation against American Electric Power Service Corporation (AEP) alleging that AEP's transmission rates and revenue requirements are unjust and unreasonable.

Comment date: November 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Southern California Edison Company

[Docket No. ER00–70–000]

Take notice that on October 8, 1999, Southern California Edison Company (SCE), tendered for filing a Service Agreement for Wholesale Distribution Service under SCE's Wholesale Distribution Access Tariff, and an Interconnection Facilities Agreement between SCE and AES Placerita, Inc.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: October 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Ameren Services Company

[Docket No. ER00–71.000]

Take notice that on October 8, 1999, Ameren Services Company (ASC), tendered for filing a Service Agreement for Market Based Rate Power Sales between ASC and Illinova Power Marketing, Inc. (IPM). ASC asserts that the purpose of the Agreement is to permit ASC to make sales of capacity and energy at market based rates to IPM pursuant to ASC's Market Based Rate Power Sales Tariff filed in Docket No. ER98–3285–000.

ASC requests that the Service Agreement be allowed to become effective September 23, 1999, the date for said agreement.

Comment date: October 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power & Light Company

[Docket No. ER00–72–000]

Take notice that on October 8, 1999, Florida Power & Light Company (FPL), tendered for filing a Service Agreement with NUI Energy Brokers, Inc., for service pursuant to FPL's Market Based Rates Tariff.

FPL requests that the Service Agreement be made effective on October 5, 1999.

Comment date: October 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Central Maine Power Company

[Docket No. ER00–73–000]

Take notice that on October 8, 1999, Central Maine Power Company (CMP), tendered for filing an executed service agreement for sale of capacity and/or energy entered into with Public Service Electric and Gas Company. Service will be provided pursuant to CMP's Wholesale Market Tariff, designated rate schedule CMP–FERC Electric Tariff, Original Volume No. 4.

Comment date: October 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Northeast Utilities Service Company

[Docket No. ER00–74–000]

Take notice that on October 8, 1999, Northeast Utilities Service Company

(NUSCO), tendered for filing a Service Agreement to provide Network Integration Transmission Service to the New England Power Company under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to the New England Power Company.

NUSCO requests that the Service Agreement become effective April 1, 1999.

Comment date: October 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Commonwealth Edison Company

[Docket No. ER00–77–000]

Take notice that on October 8, 1999, Commonwealth Edison Company (ComEd) submitted for filing a Service Agreement, establishing Unicom Energy, Inc. (UEI), as a customer under the terms of ComEd's Power Sales and Reassignment of Transmission Rights Tariff PSRT–1 (PSRT–1 Tariff). The Commission has previously designated the PSRT–1 Tariff as FERC Electric Tariff, First Revised Volume No. 2.

ComEd requests an effective date of September 9, 1999, and accordingly seeks waiver of the Commission's notice requirements.

Copies of this filing were served upon UEI.

Comment date: October 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Electric Power Company

[Docket No. ER00–78–000]

Take notice that on October 8, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a short-term firm Transmission Service Agreement and a non-firm Transmission Service Agreement between itself and Edison Mission Marketing & Trading, Inc., (Edison Mission). The Transmission Service Agreements allow Edison Mission to receive transmission services under Wisconsin Energy Corporation Operating Companies' FERC Electric Tariff, Volume No. 1.

Wisconsin Electric requests an effective date coincident with its filing and waiver of the Commission's notice requirements in order to allow for economic transactions as they appear.

Copies of the filing have been served on Edison Mission, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: October 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–79–000]

Take notice that on October 8, 1999, Alliant Energy Corporate Services, Inc., tendered for filing executed Service Agreements for short-term firm point-to-point transmission service and non-firm point-to-point transmission service, establishing Edison Mission Marketing & Trading, Inc., as a point-to-point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc., transmission tariff.

Alliant Energy Corporate Services, Inc. requests an effective date of September 27, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: October 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Atlantic City Electric Company

[Docket No. ER00–80–000]

Take notice that on October 8, 1999, Atlantic City Electric Company (ACE), tendered for filing proposed tariff sheets for the PJM Interconnection, LLC's Open Access Transmission Tariff (PJM Tariff) to accommodate the State of New Jersey's retail access program. The proposed tariff sheets describe the procedures for determining the peak load contributions and hourly load obligations for Atlantic's retail customers located in the Atlantic zone. This information is used in the determination of capacity, transmission, and hourly energy obligations.

Atlantic requests waiver of the Commission's notice of filing requirements to allow these proposed tariff sheets to become effective November 14, 1999, the date that the retail access program commenced in the State of New Jersey.

Copies of the filing have been served on all the members of the PJM Interconnection, LLC and the New Jersey Board of Public Utilities.

Comment date: October 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Delmarva Power and Light Company

[Docket No. ER00–81–000]

Take notice that on October 8, 1999, Delmarva Power and Light Company (Delmarva), tendered for filing proposed tariff sheets for the PJM Interconnection, LLC's Open Access Transmission Tariff (PJM Tariff) to accommodate the State of Delaware's retail access program. The proposed tariff sheets describe the procedures for determining the peak load contributions and hourly load obligations for Delmarva's retail customers located in the Delmarva zone. This information is used in the determination of capacity, transmission, and hourly energy obligations.

Delmarva requests waiver of the Commission's notice of filing requirements to allow these proposed tariff sheets to become effective October 1, 1999, the date that the retail access program commenced in the State of Delaware.

Copies of the filing have been served on all the members of the PJM Interconnection, LLC and the Delaware Public Service Commission.

Comment date: October 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Idaho Power Company

[Docket No. ER00–82–000]

Take notice that on October 8, 1999, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement for Firm Point-to-Point Transmission Service between Idaho Power Company and Seattle City Light.

Comment date: October 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Commonwealth Edison Company

[Docket No. ER00–98–000]

Take notice that on October 12, 1999, Commonwealth Edison Company (ComEd) tendered for filing an unexecuted Service Agreement, establishing Edison Mission Marketing & Trading, Inc. (EMMT), as a customer under the terms of ComEd's Power Sales and Reassignment of Transmission Rights Tariff PSRT–1 (PSRT–1 Tariff). The Commission has previously designated the PSRT–1 Tariff as FERC Electric Tariff, First Revised Volume No. 2.

ComEd requests an effective date of September 13, 1999, and accordingly seeks waiver of the Commission's notice requirements.

Copies of this filing were served upon EMMT.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Black Hills Corporation

[Docket No. ER00–99–000]

Take notice that on October 12, 1999, Black Hills Corporation (Black Hills),

tendered for filing a service agreement between Black Hills as the power sales provider and Municipal Energy Agency of Nebraska as the customer. The short-term service agreement (for transactions of one year or less) provides for Market-Based Rate Wholesale Power Sales under Black Hills' Market-Based Rate Wholesale Power Sales Tariff, FERC Electric Tariff, Original Volume No. 3 (the Market-Rate Tariff) Black Hills requests an effective date of October 8, 1999.

Black Hills Corporation states that copies of the filing have been served upon the affected customer.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Idaho Power Company

[Docket No. ER00–100–000]

Take notice that on October 12, 1999, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission Service Agreements for Non-Firm Point-to-Point Transmission Service and Firm Point-to-Point Transmission Service between Idaho Power Company and Public Service Company of Colorado.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Allegheny Energy Unit 1 and Unit 2, L.L.C.

[Docket No. ER00–101–000]

Take notice that on October 12, 1999, Allegheny Energy Unit 1 and Unit 2, L.L.C. (Allegheny), tendered for filing a market rate tariff of general applicability under which it proposes to sell capacity and energy to non-affiliates at market-based rates, and to make such sales to affiliates at rates capped by a publicly available regional index price.

Allegheny requests an effective date no later that December 1, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Select Energy, Inc. Northeast Utilities Service Company

[Docket No. ER00–102–000]

Take notice that on October 12, 1999, Select Energy, Inc. (Select), tendered for filing under Section 205 of the Federal Power Act an agreement for wholesale power supply and contract administration services with the Northeast Utilities Service Company (NUSCO) and the Northeast Utilities (NU) Operating Companies. The agreement will permit NUSCO and the NU Operating Companies to continue to meet their obligations under certain wholesale power supply contracts. Select and NUSCO also made a related request for waivers of the applicable codes of conduct.

Select requests an effective date of December 11, 1999.

Select states that copies of this filing have been sent to NUSCO, the Connecticut Department of Public Utility Control, the Massachusetts Department of Telecommunications and Energy and the New Hampshire Public Utilities Commission.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Commonwealth Edison Company

[Docket No. ER00–103–000]

Take notice that on October 12, 1999, Commonwealth Edison Company (ComEd), tendered for filing two Non-Firm Transmission Service Agreements with Automated Power Exchange, Inc. (APX), and NewEnergy Midwest, L.L.C. (NEM), and two Short-Term Firm Transmission Service Agreements with Wisconsin Public Service Corporation (WPS), and Detroit Edison (DE) under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of October 12, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on APX, NEM, WPS, and DE.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Western Area Power Administration

[Docket No. EL00–5–000]

Take notice that on October 8, 1999, Western Area Power Administration (Western), tendered for filing a request for expedited consideration of its petition for an order against Public Service Company of New Mexico (PNM) under sections 205 and 206 of the Federal Power Act. Western alleges an order to PNM is necessary to assure continuing electric service to the Sandia National Laboratories and Kirtland Air Force Base under the same terms and conditions of an existing contract for such service, but which expires on December 13, 1999, in the event the Commission cannot act before that date on Western's petition for a transmission service order to PNM. If the Commission issues such an order, Western would be able to provide the service after December 13, 1999.

Comment date: October 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such 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 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 these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–27608 Filed 10–21–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER91–195–039, et al.]

Western Systems Power Pool, et al.; Electric Rate and Corporate Regulation Filings

October 14, 1999.

Take notice that the following filings have been made with the Commission:

1. Western Systems Power Pool

[Docket No. ER91–195–039]

Take notice that on October 4, 1999, the Western Systems Power Pool (WSPP) filed certain information to update its April 30, 1997, quarterly filing. This data is required by Ordering Paragraph (D) of the Commission's June 27, 1991 Order (55 FERC ¶ 61,495) and Ordering Paragraph (C) of the Commission's June 1, 1992 Order On Rehearing Denying Request Not To Submit Information, And Granting In Part And Denying In Part Privileged Treatment. Pursuant to 18 CFR 385.211,

WSPP has requested privileged treatment for some of the information filed consistent with the June 1, 1992 order.

Copies of WSPP's informational filing are on file with the Commission, and the non-privileged portions are available for public inspection in the Public Reference Room, Room 2A.

2. TC Power Solutions

[Docket No. ER97–1117–008]

Take notice that on October 1, 1999, TC Power Solutions filed its quarterly report for the quarter ending June 30, 1999, for information only.

3. South Jersey Energy Company

[Docket No. ER97–1397–007]

Take notice that on October 6, 1999, South Jersey Energy Company filed its quarterly report for the quarter ending September 30, 1999, for information only.

4. Environmental Resources Trust, Inc., Tennessee Power Company, Eclipse Energy, Inc., Golden Valley Power Company, Vitol Gas & Electric LLC, and Energetix, Inc.

[Docket Nos. ER98–3233–005, ER95–581–018, ER94–1099–022, ER98–4334–004, ER94–155–027, and ER97–3556–009]

Take notice that on October 7, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

5. Navitas, Inc., Energy Clearinghouse Corporation, Vanpower, Inc., and Granger Energy, L.L.C.

[Docket No. ER99–2537–001, ER98–2020–005, ER96–552–015, and ER97–4240–005]

Take notice that on October 5, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

6. Baltimore Gas and Electric Company

[Docket No. ER00–37–000]

Take notice that on October 5, 1999, Baltimore Gas and Electric Company filed its quarterly report for the quarter ending September 30, 1999.

Comment date: October 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Boralex Stratton Energy, Inc.

[Docket No. ER00–59–000]

Take notice that on October 7, 1999, Boralex Stratton Energy, Inc. filed its quarterly report for the quarter ending September 30, 1999.

Comment date: October 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Otter Tail Power Company Tenaska Georgia Partners, L.P.

[Docket No. ER00–75–000 and ER00–76–000]

Take notice that on October 8, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending September 30, 1999.

Comment date: October 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Lone Star Steel Sales Company

[Docket No. ER00–90–000]

Take notice that on October 12, 1999, Lone Star Steel Sales Company filed its quarterly report for the quarter ending September 30, 1999.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Energy Transfer Group, LLC, Sunoco Power Marketing L.L.C., Nordic Electric, L.L.C., Eagle Gas Marketing Company, Con Edison Solutions, Inc, Con Edison Energy, Inc., and CHI Power Marketing, Inc.

[Docket No. ER96–280–015, ER97–870–011, ER96–127–009, ER96–1503–014, ER997–705–010, ER98–2491–005, and ER96–2640–012]

Take notice that on October 8, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

11. Power Exchange Corporation, Nicor Energy Management Services Company, Panda Guadalupe Power Marketing, LLC, Tosco Power, Inc., Kaztex Energy Ventures, Inc., Aurora Power Resources, Prairie Winds Energy, NAP Trading and Marketing, Inc., Wilson Power & Gas Smart, Inc., and Alliance Energy Services Partnership

[Docket No. ER95–72–020, ER97–1816–009, ER98–3901–001, ER96–2635–011, ER95–295–020, ER98–573–003, ER95–1234–014, ER95–1278–012, ER95–751–020, and ER99–1945–002]

Take notice that on October 4, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

Standard Paragraphs

E. Any person desiring to be heard or to protest such 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 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 these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–27609 Filed 10–21–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

October 18, 1999.

a. *Type of Application:* New Minor License.

b. *Project No.:* P–2694–002.

c. *Date filed:* September 27, 1999.

d. *Applicant:* Nantahala Power and Light.

e. *Name of Project:* Queens Creek Hydroelectric Project.

f. *Location:* On Queens Creek, near the town of Topton, in Macon County, North Carolina. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Thomas D. Smitherman, Vice President: Production, Transmission, and Distribution, 301 NP&L Loop Road, Franklin, NC 28734, (828) 369–4514.

i. *FERC Contact:* Kevin Whalen (202) 219–2790, kevin.whalen@ferc.fed.us

j. *Deadline for filing additional study requests:* November 26, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The project consists of the following existing facilities: (1) a 78-foot-high, 382-foot-long earth-faced rock fill dam; (2) a 4-foot-wide by 4-foot-high horizontal intake structure, having a trashrack with 1.0-inch clear bar spacing; (3) a 6,250-foot-long steel penstock leading to a concrete and steel powerhouse containing a single generating unit, having an installed capacity of 1,440 kW; (4) a 37-acre impoundment that extends approximately 0.7 miles upstream; and (5) appurtenant facilities. The applicant estimates the total average annual generation would be approximately 5,000 MWh.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20246, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

n. With this notice, we are initiating consultation with the State Historic Preservation Officer as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

o. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

David P. Boergers,

Secretary.

[FR Doc. 99–27614 Filed 10–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for a Subsequent License

October 18, 1999.

a. *Type of Filing:* Notice of Intent to File An Application of a Subsequent License.

b. *Project No.:* 7725.

c. *Date Filed:* September 30, 1999.

d. *Submitted By:* Barton Village, Inc.-current licensee.

e. *Name of Project:* Barton Village Hydroelectric Project.

f. *Location:* On the Clyde River near the City of Newport, in Orleans County, Vermont.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act.

h. *Licensee Contact:* Robert Arnold, Barton Village, Inc., P.O. Box 519, Barton, VT 05822, (802) 525–4747.

i. *FERC Contact:* Tom Dean, thomas,dean@ferc.fed.us, (202) 219–2778.

j. *Effective date of current license:* October 1, 1954.

k. *Expiration date of current license:* September 30, 2004.

l. *Description of the Project:* The project consists of the following existing facilities: (1) a 70-foot-long, 24-foot-high gravity dam; (2) 1.3-foot-high wooden flashboards extending 57 feet across a concrete spillway; (3) a 187-acre reservoir at an elevation of 1,140.7 feet msl; (4) a 365-foot-long, 7-foot-diameter penstock; (5) two 100-foot-long, 5.5 and 5.8-feet-diameter penstocks leading to; (6) a powerhouse containing two generating units with a total installed capacity of 1,400 kW; (7) two tailraces; and (8) other appurtenances.

m. Each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by September 30, 2002.

David P. Boergers,

Secretary.

[FR Doc. 99–27615 Filed 10–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

October 18, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11812–200.

c. *Date filed:* September 2, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Pueblo Dam Hydro Project.

f. *Location:* At the existing U.S. Bureau of Reclamation's Pueblo Dam and Reservoir on the Arkansas River, near the Town of Pueblo, County, Colorado.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenbeger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Ed Lee (202) 219–2809 or E-mail address at Ed.Lee@FERC.fed.us.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervene or files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *Description of Project:* The proposed project would utilize the existing U.S. Bureau of Reclamation's Pueblo Dam and Reservoir, and would consist of the following facilities: (1) four new steel penstocks, each about 50-foot-long and 8-foot-in-diameter; (2) a new powerhouse to be constructed on the downstream side of the dam having an installed capacity of 3,000 kilowatts; (3)

a new .25-mile-long, 14.7-kilovolt transmission line; and (4) appurtenant facilities. The proposed average annual generation is estimated to be 18.4 gigawatthours. The cost of the studies under the permit will not exceed $1,000,000.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2–A, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rims.htm or call (202) 208–2222 for assistance.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service or Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–27616 Filed 10–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

October 18, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11820–000.

c. *Date filed:* September 27, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Clark Canyon Dam Hydro Project.

f. *Location:* At the existing U.S. Bureau of Reclamation's Clark Canyon Dam and Reservoir on the Beaverhead River, near the Town of Dillon, Beaverhead County, Montana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Ed Lee (202) 219–2809 or E-mail address at Ed.Lee@FERC.fed.us.

j. *Deadline for filing motions to intervene and protect:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *Description of Project:* The proposed project would utilize the existing U.S. Bureau of Reclamation's Clark Canyon Dam and Reservoir, and would consist of the following facilities: (1) two new steel penstocks, each about 300–foot–long and 8–foot–in–diameter (2) a new powerhouse to be constructed on the downstream side of the dam having an installed capacity of 3,000 kilowatts; (3) a new 10-mile-long, 14.7-kilovolt transmission line; and (4) appurtenant facilities. The proposed average annual generation is estimated to be 18 gigawatthours. The cost of the students under the permit will not exceed $1,250,000.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2–A, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rims.htm or call (202) 208–2222 for assistance.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–27619 Filed 10–21–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6462–5]

Assistance for Local Governments That Wish To Design and Implement Voluntary Environmental Management Systems (EMS)

AGENCY: Environmental Protection Agency.

ACTION: Notice; announcement of a program to assist local governments that wish to voluntarily develop and implement environmental management systems; request for applications.

SUMMARY: The Environmental Protection Agency (EPA) announces its intention to assist up to nine local government entities that wish to design and implement environmental management systems. Assistance, in the form of training and other technical assistance, would be provided through a consulting organization funded by EPA. No direct financial assistance to participating local governments would be provided. Working with EPA, participants would be asked to develop EMSs, using the elements of the ISO 14001 International EMS Standard as a baseline over a two year period. This program is based on EPA's existing policy to promote greater voluntary adoption of EMSs, especially with public sector organizations. EPA believes EMSs can help all types of organizations improve their overall environmental performance, prevent pollution, and improve regulatory compliance.

This project is being jointly sponsored by several EPA offices including the Office of Water, Office of Compliance, Office of Solid Waste, and Office of Air and Radiation.

DATES: Letters of Application from interested organizations should be submitted no later than December 16, 1999.

ADDRESSES: Letters of application should be submitted to James Horne, U.S. Environmental Protection Agency, Office of Wastewater Management, 401 M Street, SW., Washington, DC 20460, Mail Code: 4201, (202) 260–5802.

FOR FURTHER INFORMATION CONTACT: James Horne at (202) 260–5802.

SUPPLEMENTARY INFORMATION:

I. Background

Around the world, the voluntary use of environmental management systems (EMS) is increasing as organizations seek to integrate environmental considerations into their day-to-day operations, improve their overall environmental performance and compliance, and demonstrate this performance to outsiders, including regulatory agencies. An EMS consists of a series of standard procedures and practices that organizations put in place to manage their environmental obligations. EMSs do not impose new technical requirements, nor are they a substitute for existing regulatory standards. However, an EMS provides a framework for an organization to more effectively manage its environmental obligations and, hopefully, improve its environmental performance over time. By more effectively managing these obligations, organizations can also operate more efficiently and reduce costs.

EPA has recently published a report entitled *Aiming for Excellence-Actions to Encourage Stewardship and Accelerate Environmental Progress.* Action 2 of this report makes clear that, as a matter of policy, EPA will promote and encourage the use of environmental management systems that help improve compliance, pollution prevention, and other measures of environmental performance. This project, along with a similar project that is now completed, reflects the growing awareness and support within EPA for voluntary adoption of EMSs.

While the adoption of EMSs, especially those based on the ISO 14001 International Voluntary Standard, has occurred mainly in the private sector, there is growing evidence that EMSs are entirely applicable to operations managed by local governments. The U.S. EPA has been strategically promoting the use of EMSs in a variety of venues, including with municipal and county governments. The Agency is just now completing a two year demonstration program with nine local government agencies designed to assist these entities put EMSs in place, using the ISO 14001 standard as a baseline. Participants have realized a variety of benefits as a result of their participation including, but not limited to (1) better understanding of the root causes of noncompliance, (2) increased employee awareness of environmental issues, (3) lower costs through reduced energy use, and (4) better employee morale. More information about this project can be found at http://www.getf.org/muni.htm

U.S. EPA, in partnership with other stakeholders, is interested in further promoting the use of EMSs in the public sector building upon the successes of our initial program as described above. Accordingly, the Agency plans to sponsor another two-year demonstration project, scheduled to begin in early 2000, with up to nine participating local governments. EPA wishes to support a diverse set of local government entities in terms of the type of operation, size of organization, and geographic distribution around the country. EPA also believes an EMS can provide significant benefits to small organizations. Accordingly, we encourage small local governments to apply to participate in this program.

Participants in this program would be asked to:

(1) Communicate and work with local stakeholders as they develop the EMS;

(2) Adopt meaningful performance objectives for their EMS that address pollution prevention, compliance, and unregulated environmental impacts;

(3) Ensure that their EMS contained adequate procedures for assuring compliance with all applicable regulations; and

(4) Share information about their EMS as it is developed and other relevant information (implementation costs, benefits, lessons learned, barriers to implementation, etc.)

On-site and group training would be provided by the consulting organization retained by EPA throughout the project. This training and technical assistance would help participants to:

—Develop an environmental management system suited to their particular needs;

—Implement the system and track its performance over time; and

—Communicate effectively and reach out to local stakeholders and others about their EMS

Participants would attend periodic workshops to receive more in-depth training and share information with other participants.

II. Guidelines for Participation

Organizations wishing to be considered for participation in this project need to:

1. Submit a letter of application to the person at the address listed above by December 16, 1999.

2. This letter should be signed by a top management representative from the organization and contain the following information:

—A brief description of the organization and its responsibilities

—The name of a top management representative and the person who will be given the responsibility and authority within the organization for leading the work to develop the EMS. This person should be available to travel and participate in up to four workshops with other participants over the life of the project. These workshops will be held approximately every six months

—A willingness to form a core team of other employees that will work with this person and an assurance that the core team's efforts will be fully supported throughout the project by top management. EPA and its consultant will be available to assist participants as they form these core teams.

—A preliminary, non-binding indication of the operation(s) within the organization that will be developing the EMS (*i.e.* public works, transit operations, etc.). A final determination of these operations can occur once the organization is accepted, based on further discussions with EPA.

—A description of the reasons why the organization wishes to participate and some of the benefits it hopes to realize from adopting an EMS.

—Assurance of top management's commitment to fully support the core team throughout the life of the project. Top management support, visibility, and leadership are essential to the development of a successful and sustaining EMS.

Once all applications are received, EPA and its consultant will conduct follow-up interviews with the applicants to discuss in more detail the information contained in the letter of application and any other issues needed to make a final decision on which organizations to select. EPA hopes to have this selection process completed by no later than February 15, 2000.

Note: Applicants will need to have access to the Internet.

Dated: October 14, 1999.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 99–27677 Filed 10–21–99; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL DEPOSIT INSURANCE CORPORATION

Rescission of Policy Statement Regarding Independent External Auditing Programs of State Nonmember Banks, and Adoption of the Interagency Policy Statement on External Auditing Programs of Banks and Savings Associations

AGENCY: Federal Deposit Insurance Corporation (FDIC or Corporation).

ACTION: Rescission of a Policy Statement and Adoption of an Interagency Policy Statement.

SUMMARY: In an effort to provide consistent guidance for banks and savings associations regardless of their primary federal supervisor, the FDIC is rescinding its Statement of Policy Regarding Independent External Auditing Programs of State Nonmember Banks (Current Policy Statement) and concurrently adopting the Interagency Policy Statement on External Auditing Programs of Banks and Savings Associations (Interagency Policy Statement). Both policy statements encourage institutions to adopt an annual external auditing program, preferably an audit by an independent public accountant, and to establish an audit committee composed entirely of outside directors, where practicable. In addition, the Interagency Policy Statement includes two alternatives to an audit by an independent public accountant for institutions not subject to the audit requirement in section 36 of the Federal Deposit Insurance Act (FDI Act). The alternatives consist of (1) An attestation report on internal control over specified schedules of the institution's regulatory reports or (2) A report on the institution's balance sheet. Both must be performed by an independent public accountant.

The Interagency Policy Statement also includes guidance regarding the responsibilities of boards of directors, audit committees, and senior management with respect to external auditing programs; the attributes and types of external auditing programs; and the review of external auditing programs by examiners.

DATES: The Current Policy Statement is rescinded and the Interagency Policy Statement is effective for fiscal years beginning on or after January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Doris L. Marsh, Examination Specialist, Division of Supervision, (202) 898–8905, or A. Ann Johnson, Counsel, Legal Division, (202) 898–3573, FDIC, 550 17th Street, NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

The FDIC first adopted guidance on external auditing programs in its Policy Statement Regarding Independent External Auditing Programs of State Nonmember Banks in 1988 (53 FR 47871, November 28, 1988). In 1996, the FDIC reviewed the Current Policy Statement pursuant to section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 and adopted several amendments to eliminate inconsistencies and outdated requirements (61 FR 32438, June 24, 1996).

The Federal Financial Institutions Examination Council (FFIEC), on behalf of the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS), collectively referred to as the ''banking agencies'' or the ''agencies,'' have each provided guidance on external audits to their supervised institutions, but a uniform policy did not exist. Under the auspices of the FFIEC, the agencies sought public comment on a proposed policy statement on External Auditing Programs of Banks and Savings Associations in February 1998 (63 FR 7796, February 17, 1998). The FFIEC received approximately 120 letters commenting on the proposed policy statement, and it revised the policy statement after considering the comments. On August 19, 1999, the FFIEC approved the Interagency Policy Statement on External Auditing Programs of Banks and Savings Associations (Policy Statement) (64 FR 52319, September 28, 1999) and recommended that the banking agencies adopt it.[1]

II. Rescission of the Current Policy Statement and Adoption of the Interagency Policy Statement

In order to minimize burden on institutions and holding companies and in the spirit of section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, the banking agencies seek to provide consistent and uniform guidance for supervised institutions. The banking agencies believe that an independent external audit provides reasonable assurance that an institution's financial statements are prepared in accordance with generally accepted accounting principles (GAAP). Accordingly, the banking agencies recommend that every institution have an external auditing program.

To provide explicit guidance to institutions regarding these programs, the FFIEC approved a uniform Interagency Policy Statement on August 19, 1999. The FFIEC recommended to the banking agencies that they individually adopt the policy. Thus, the FDIC must replace its Current Policy Statement with the Interagency Policy Statement in order to achieve uniformity in this area.

III. Comparison of the Current and Interagency Policy Statements

For the most part, both the Current Policy Statement and the Interagency Policy Statement provide similar guidance. Both encourage each institution to have an annual audit of its financial statements performed by an independent public accountant. The Interagency Policy Statement also describes two alternatives to an audit that an institution may elect to have performed annually in order to have an acceptable external auditing program. These alternatives, which must be performed by an independent public accountant, are an attestation on internal control over financial reporting on certain schedules of the Reports of Condition and Income (Call Report) and an audit of the institution's balance sheet. The Interagency Policy Statement further indicates that for a smaller institution with less complex operations, the attestation on internal control may be less costly than an audit of its financial statements or its balance sheet and provide more useful information to management. Neither policy precludes the use of agreed-upon procedures/state-required examinations as an external auditing program.

Both policy statements include sections discussing their applicability to institutions that are part of a holding company, newly chartered institutions, and institutions presenting supervisory concern. In addition, both policies recommend that each institution have an audit committee consisting entirely of outside directors, unless impracticable.

Banks and savings associations (institutions) with $500 million or more in total assets must have an annual audit performed by an independent public accountant under section 36 of

[1] The National Credit Union Administration (NCUA), also a member of the FFIEC, is not adopting the policy.

the Federal Deposit Insurance Act (FDI Act), as implemented by 12 CFR part 363. Thus, both policy statements are directed toward institutions below that threshold that are not otherwise subject to audit requirements.

The two policies differ in the extent of guidance provided rather than the content of the guidance. Accordingly, the Interagency Policy Statement includes some guidance regarding independent external auditing programs that is lacking in the Current Policy Statement. For example, it discusses the responsibilities of boards of directors, audit committees, and senior management in more detail than the Current Policy Statement. It also describes the attributes and types of external auditing programs available and includes a short description of each. Guidance on what examiners will be evaluating in their review of external auditing programs is also included in the Interagency Policy Statement. This policy statement also recommends that examiners have access to the auditor's workpapers concerning the auditing engagement.

The following table shows the number and section title of each of the paragraphs in the Current Policy Statement and the section title of the corresponding provision in the Interagency Policy Statement:

PARAGRAPH CONVERSION TABLE

Current policy paragaraph No.	Current policy statement: section title	Interagency policy statement: section title
1–3	Introduction	Introduction.
4	State Nonmember Banks Not Subject to Part 363	Introduction.
5		Overview of the External Auditing Program Audit Committee.
6		Examiner Guidance Review of the External Auditing Program.
7	Audit by an Independent Public Accountant	External Auditing Programs Types of External Auditing Programs.
8		External Auditing Programs Other Considerations—Timing.
9–10	Alternatives to a Financial Statement Audit	External Auditing Programs External Auditing Programs.
11	Newly Insured Banks	Special Situations Newly Insured Institutions.
12–13	Notification and Submission of Reports	Examiner Guidance Access to Reports.
14	Holding Company Subsidiaries	Special Situations Holding Company Subsidiaries.
15	Troubled Banks	Special Situations Institutions Presenting Supervisory Concerns.
Appendix A	Definitions	Appendix A—Definitions.

The Interagency Policy Statement instructs institutions to provide copies of reports pertaining to the external auditing program, including any management letters, to the agencies and any state authority in accordance with their appropriate supervisory office's guidance. The FDIC requests that each state nonmember bank furnish a copy of any reports by the independent public accountant pertaining to the bank's external auditing program (regardless of the scope) to the appropriate FDIC regional office as soon as possible after the report is received by the bank. In addition, the FDIC requests each bank to promptly notify the appropriate FDIC regional office when any independent public accountant is initially engaged to perform external auditing work and when a change in, or termination of, its independent public accountant occurs.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection that does not display a currently valid Office of Management and Budget (OMB) control number. The FDIC submitted to OMB a request for approval of the information collection requested by this policy statement (64 FR 55926, October 15, 1999).

V. Rescission and Adoption of Policy Statements

For the reasons set forth in the preamble, the Board of Directors of the FDIC hereby rescinds the FDIC's Policy Statement Regarding Independent External Auditing Programs of State Nonmember Banks and adopts the Interagency Policy Statement on External Auditing Programs of Banks and Savings Associations.

The text of the Interagency Policy Statement follows:

Interagency Policy Statement On External Auditing Programs of Banks and Savings Associations

Introduction

The board of directors and senior managers of a banking institution or savings association (institution) are responsible for ensuring that the institution operates in a safe and sound manner. To achieve this goal and meet the safety and soundness guidelines implementing section 39 of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831p-1),[1] the institution should maintain effective systems and internal control[2] to produce reliable and accurate financial reports.

Accurate financial reporting is essential to an institution's safety and soundness for numerous reasons. First, accurate financial information enables management to effectively manage the institution's risks and make sound business decisions. In addition, institutions are required by law[3] to provide accurate and timely financial reports (e.g., Reports of Condition and Income [Call Reports] and Thrift Financial Reports) to their appropriate regulatory agency. These reports serve an important role in the agencies'[4] risk-focused supervision programs by contributing to their pre-examination planning, off-site monitoring programs, and assessments of an institution's capital adequacy and financial strength. Further, reliable financial reports are necessary for the institution to raise capital. They provide data to stockholders, depositors and other

[1] See 12 CFR part 30 for national banks; 12 CFR part 364 for state nonmember banks; 12 CFR part 208 for state member banks; and 12 CFR part 510 for savings associations.

[2] This Policy Statement provides guidance consistent with the guidance established in the ''Interagency Policy Statement on the Internal Audit Function and its Outsourcing.''

[3] See 12 U.S.C. 161 for national banks; 12 U.S.C. 1817a for state nonmember banks; 12 U.S.C. 324 for state member banks; and 12 U.S.C. 1464(v) for savings associations.

[4] Terms defined in appendix A are italicized the first time they appear in this policy statement.

funds providers, borrowers, and potential investors on the company's financial position and results of operations. Such information is critical to effective market discipline of the institution.

To help ensure accurate and reliable financial reporting, the agencies recommend that the board of directors of each institution establish and maintain an external auditing program. An external auditing program should be an important component of an institution's overall risk management process. For example, an external auditing program complements the internal auditing function of an institution by providing management and the board of directors with an independent and objective view of the reliability of the institution's financial statements and the adequacy of its financial reporting internal controls. Additionally, an effective external auditing program contributes to the efficiency of the agencies' risk-focused examination process. By considering the significant risk areas of an institution, an effective external auditing program may reduce the examination time the agencies spend in such areas. Moreover, it can improve the safety and soundness of an institution substantially and lessen the risk the institution poses to the insurance funds administered by the FDIC.

This policy statement outlines the characteristics of an effective external auditing program and provides examples of how an institution can use an external auditor to help ensure the reliability of its financial reports. It also provides guidance on how an examiner may assess an institution's external auditing program. In addition, this policy statement provides specific guidance on external auditing programs for institutions that are holding company subsidiaries, newly insured institutions, and institutions presenting supervisory concerns.

The adoption of a financial statement audit or other specified type of external auditing program is generally only required in specific circumstances. For example, insured depository institutions covered by section 36 of the FDI Act (12 U.S.C. 1831m), as implemented by part 363 of the FDIC's regulations (12 CFR part 363), are required to have an external audit and an audit committee. Therefore, this policy statement is directed toward banks and savings associations which are exempt from part 363 (i.e., institutions with less than $500 million in total assets at the beginning of their fiscal year) or are not otherwise subject to audit requirements by order, agreement, statute, or agency regulations.

Overview of External Auditing Programs

Responsibilities of the Board of Directors

The board of directors of an institution is responsible for determining how to best obtain reasonable assurance that the institution's financial statements and regulatory reports are reliably prepared. In this regard, the board is also responsible for ensuring that its external auditing program is appropriate for the institution and adequately addresses the financial reporting aspects of the significant risk areas and any other areas of concern of the institution's business.

To help ensure the adequacy of its internal and external auditing programs, the agencies encourage the board of directors of each institution that is not otherwise required to do so to establish an audit committee consisting entirely of outside directors.[5] However, if this is impracticable, the board should organize the audit committee so that outside directors constitute a majority of the membership.

Audit Committee

The audit committee or board of directors is responsible for identifying at least annually the risk areas of the institution's activities and assessing the extent of external auditing involvement needed over each area. The audit committee or board is then responsible for determining what type of external auditing program will best meet the institution's needs (refer to the descriptions under ''Types of External Auditing Programs'').

When evaluating the institution's external auditing needs, the board or audit committee should consider the size of the institution and the nature, scope, and complexity of its operations. It should also consider the potential benefits of an audit of the institution's financial statements or an examination of the institution's internal control structure over financial reporting, or both. In addition, the board or audit committee may determine that additional or specific external auditing procedures are warranted for a particular year or several years to cover areas of particularly high risk or special concern. The reasons supporting these decisions should be recorded in the committee's or board's minutes.

If, in its annual consideration of the institution's external auditing program, the board or audit committee determines, after considering its inherent limitations, that an agreed-upon procedures/state-required examination is sufficient, they should also consider whether an independent public accountant should perform the work. When an independent public accountant performs auditing and attestation services, the accountant must conduct his or her work under, and may be held accountable for departures from, professional standards. Furthermore, when the external auditing program includes an audit of the financial statements, the board or audit committee obtains an opinion from the independent public accountant stating whether the financial statements are presented fairly, in all material respects, in accordance with generally accepted accounting principles (GAAP). When the external auditing program includes an examination of the internal control structure over financial reporting, the board or audit committee obtains an opinion from the independent public accountant stating whether the financial reporting process is subject to any material weaknesses.

Both the staff performing an internal audit function and the independent public accountant or other external auditor should have unrestricted access to the board or audit committee without the need for any prior management knowledge or approval. Other duties of an audit committee may include reviewing the independence of the external auditor annually, consulting with management, seeking an opinion on an accounting issue, and overseeing the quarterly regulatory reporting process. The audit committee should report its findings periodically to the full board of directors.

External Auditing Programs

Basic Attributes

External auditing programs should provide the board of directors with information about the institution's financial reporting risk areas, *e.g.*, the institution's internal control over financial reporting, the accuracy of its recording of transactions, and the completeness of its financial reports prepared in accordance with GAAP.

The board or audit committee of each institution at least annually should review the risks inherent in its particular activities to determine the scope of its external auditing program. For most institutions, the lending and

[5] Institutions with $500 million or more in total assets must establish an independent audit committee made up of outside directors who are independent of management. See 12 U.S.C. 1831m(g)(1) and 12 CFR 363.5.

investment securities activities present the most significant risks that affect financial reporting. Thus, external auditing programs should include specific procedures designed to test at least annually the risks associated with the loan and investment portfolios. This includes testing of internal control over financial reporting, such as management's process to determine the adequacy of the allowance for loan and lease losses and whether this process is based on a comprehensive, adequately documented, and consistently applied analysis of the institution's loan and lease portfolio.

An institution or its subsidiaries may have other significant financial reporting risk areas such as material real estate investments, insurance underwriting or sales activities, securities broker-dealer or similar activities (including securities underwriting and investment advisory services), loan servicing activities, or fiduciary activities. The external auditing program should address these and other activities the board or audit committee determines present significant financial reporting risks to the institution.

Types of External Auditing Programs

The agencies consider an annual audit of an institution's financial statements performed by an independent public accountant to be the preferred type of external auditing program. The agencies also consider an annual examination of the effectiveness of the internal control structure over financial reporting or an audit of an institution's balance sheet, both performed by an independent public accountant, to be acceptable alternative external auditing programs. However, the agencies recognize that some institutions only have agreed-upon procedures/state-required examinations performed annually as their external auditing program. Regardless of the option chosen, the board or audit committee should agree in advance with the external auditor on the objectives and scope of the external auditing program.

Financial Statement Audit by an Independent Public Accountant. The agencies encourage all institutions to have an external audit performed in accordance with generally accepted auditing standards (GAAS). The audit's scope should be sufficient to enable the auditor to express an opinion on the institution's financial statements taken as a whole.

A financial statement audit provides assurance about the fair presentation of an institution's financial statements. In addition, an audit may provide recommendations for management in carrying out its control responsibilities. For example, an audit may provide management with guidance on establishing or improving accounting and operating policies and recommendations on internal control (including internal auditing programs) necessary to ensure the fair presentation of the financial statements.

Reporting by an Independent Public Accountant on an Institution's Internal Control Structure Over Financial Reporting. Another external auditing program is an independent public accountant's examination and report on management's assertion on the effectiveness of the institution's internal control over financial reporting. For a smaller institution with less complex operations, this type of engagement is likely to be less costly than an audit of its financial statements or its balance sheet. It would specifically provide recommendations for improving internal control, including suggestions for compensating controls, to mitigate the risks due to staffing and resource limitations.

Such an attestation engagement may be performed for all internal controls relating to the preparation of annual financial statements or specified schedules of the institution's regulatory reports.[6] This type of engagement is performed under generally accepted standards for attestation engagements (GASAE).[7]

Note: For banks and savings associations, the lending, investment securities, trading, and off-balance sheet schedules consist of:

Area schedules	Reports of condition and income schedules	Thrift financial report
Loans and Lease Financing Receivables	RC–C, Part I	SC, CF.
Past Due and Nonaccrual Loans, Leases, and Other Assets	RC–N	PD.
Allowance for Credit Losses	RI–B	SC, VA.
Securities	RC–B	SC, SI, CF.
Trading Assets and Liabilities	RC–D	SO, SI.
Off-Balance Sheet Items	RC–L	SI, CMR.

Balance Sheet Audit Performed by an Independent Public Accountant. With this program, the institution engages an independent public accountant to examine and report only on the balance sheet. As with the audit of the financial statements, this audit is performed in accordance with GAAS. The cost of a balance sheet audit is likely to be less than a financial statement audit. However, under this type of program, the accountant does not examine or report on the fairness of the presentation of the institution's income statement, statement of changes in equity capital, or statement of cash flows.

Agreed-Upon Procedures/State-Required Examinations. Some state-chartered depository institutions are required by state statute or regulation to have specified procedures performed annually by their directors or independent persons.[8] The bylaws of many national banks also require that some specified procedures be performed annually by directors or others, including internal or independent persons. Depending upon the scope of the engagement, the cost of agreed-upon procedures or a state-required examination may be less than the cost of an audit. However, under this type of program, the independent auditor does

[6] Since the lending and investment securities activities generally present the most significant risks that affect an institution's financial reporting, management's assertion and the accountant's attestation generally should cover those regulatory report schedules. If the institution has trading or off-balance sheet activities that present material financial reporting risks, the board or audit committee should ensure that the regulatory report schedules for those activities also are covered by management's assertion and the accountant's attestation. (See Note.) However, the schedules listed in the Note are not intended to address all possible risks in an institution.

[7] An attestation engagement is not an audit. It is performed under different professional standards than an audit of an institution's financial statements or its balance sheet.

[8] When performed by an independent public accountant, ''specified procedures'' and ''agreed-upon procedures'' engagements are performed under standards, which are different professional standards than those used for an audit of an institution's financial statements or its balance sheet.

not report on the fairness of the institution's financial statements or attest to the effectiveness of the internal control structure over financial reporting. The findings or results of the procedures are usually presented to the board or the audit committee so that they may draw their own conclusions about the quality of the financial reporting or the sufficiency of internal control.

When choosing this type of external auditing program, the board or audit committee is responsible for determining whether these procedures meet the external auditing needs of the institution, considering its size and the nature, scope, and complexity of its business activities. For example, if an institution's external auditing program consists solely of confirmations of deposits and loans, the board or committee should consider expanding the scope of the auditing work performed to include additional procedures to test the institution's high risk areas. Moreover, a financial statement audit, an examination of the effectiveness of the internal control structure over financial reporting, and a balance sheet audit may be accepted in some states and for national banks in lieu of agreed-upon procedures/state-required examinations.

Other Considerations

Timing. The preferable time to schedule the performance of an external auditing program is as of an institution's fiscal year-end. However, a quarter-end date that coincides with a regulatory report date provides similar benefits. Such an approach allows the institution to incorporate the results of the external auditing program into its regulatory reporting process and, if appropriate, amend the regulatory reports.

External Auditing Staff. The agencies encourage an institution to engage an independent public accountant to perform its external auditing program. An independent public accountant provides a nationally recognized standard of knowledge and objectivity by performing engagements under GAAS or GASAE. The firm or independent person selected to conduct an external auditing program and the staff carrying out the work should have experience with financial institution accounting and auditing or similar expertise and should be knowledgeable about relevant laws and regulations.

Special Situations

Holding Company Subsidiaries

When an institution is owned by another entity (such as a holding company), it may be appropriate to address the scope of its external audit program in terms of the institution's relationship to the consolidated group. In such cases, if the group's consolidated financial statements for the same year are audited, the agencies generally would not expect the subsidiary of a holding company to obtain a separate audit of its financial statements. Nevertheless, the board of directors or audit committee of the subsidiary may determine that its activities involve significant risks to the subsidiary that are not within the procedural scope of the audit of the financial statements of the consolidated entity. For example, the risks arising from the subsidiary's activities may be immaterial to the financial statements of the consolidated entity, but material to the subsidiary. Under such circumstances, the audit committee or board of the subsidiary should consider strengthening the internal audit coverage of those activities or implementing an appropriate alternative external auditing program.

Newly Insured Institutions

Under the FDIC Statement of Policy on Applications for Deposit Insurance, applicants for deposit insurance coverage are expected to commit the depository institution to obtain annual audits by an independent public accountant once it begins operations as an insured institution and for a limited period thereafter.

Institutions Presenting Supervisory Concerns

As previously noted, an external auditing program complements the agencies' supervisory process and the institution's internal auditing program by identifying or further clarifying issues of potential concern or exposure. An external auditing program also can greatly assist management in taking corrective action, particularly when weaknesses are detected in internal control or management information systems affecting financial reporting.

The agencies may require a financial institution presenting safety and soundness concerns to engage an independent public accountant or other independent external auditor to perform external auditing services.[9] Supervisory concerns may include:

- Inadequate internal control, including the internal auditing program;
- A board of directors generally uninformed about internal control;
- Evidence of insider abuse;
- Known or suspected defalcations;
- Known or suspected criminal activity;
- Probable director liability for losses;
- The need for direct verification of loans or deposits;
- Questionable transactions with affiliates; or
- The need for improvements in the external auditing program.

The agencies may also require that the institution provide its appropriate supervisory office with a copy of any reports, including management letters, issued by the independent public accountant or other external auditor. They also may require the institution to notify the supervisory office prior to any meeting with the independent public accountant or other external auditor at which auditing findings are to be presented.

Examiner Guidance

Review of the External Auditing Program

The review of an institution's external auditing program is a normal part of the agencies' examination procedures. An examiner's evaluation of, and any recommendations for improvements in, an institution's external auditing program will consider the institution's size; the nature, scope, and complexity of its business activities; its risk profile; any actions taken or planned by it to minimize or eliminate identified weaknesses; the extent of its internal audit program; and any compensating controls in place. Examiners will exercise judgment and discretion in evaluating the adequacy of an institution's external auditing program.

Specifically, examiners will consider the policies, processes, and personnel surrounding an institution's external auditing program in determining whether:

- The board of directors or its audit committee adequately reviews and approves external auditing program policies at least annually.
- The external auditing program is conducted by an independent public accountant or other independent auditor and is appropriate for the institution.
- The engagement letter covering external auditing activities is adequate.
- The report prepared by the auditor on the results of the external auditing program adequately explains the auditor's findings.
- The external auditor maintains appropriate independence regarding relationships with the institution under relevant professional standards.

[9] The Office of Thrift Supervision requires an external audit by an independent public accountant for savings associations with a composite rating of 3, 4, or 5 under the Uniform Financial Institution Rating System, and on a case-by-case basis.

• The board of directors performs due diligence on the relevant experience and competence of the independent auditor and staff carrying out the work (whether or not an independent public accountant is engaged).

• The board or audit committee minutes reflect approval and monitoring of the external auditing program and schedule, including board or committee reviews of audit reports with management and timely action on audit findings and recommendations.

Access to Reports

Management should provide the independent public accountant or other auditor with access to all examination reports and written communication between the institution and the agencies or state bank supervisor since the last external auditing activity. Management also should provide the accountant with access to any supervisory memoranda of understanding, written agreements, administrative orders, reports of action initiated or taken by a federal or state banking agency under section 8 of the FDI Act (or a similar state law), and proposed or ordered assessments of civil money penalties against the institution or an institution-related party, as well as any associated correspondence. The auditor must maintain the confidentiality of examination reports and other confidential supervisory information.

In addition, the independent public accountant or other auditor of an institution should agree in the engagement letter to grant examiners access to all the accountant's or auditor's workpapers and other material pertaining to the institution prepared in the course of performing the completed external auditing program.

Institutions should provide reports [10] issued by the independent public accountant or other auditor pertaining to the external auditing program, including any management letters, to the agencies and any state authority in accordance with their appropriate supervisory office's guidance.[11]

Significant developments regarding the external auditing program should be communicated promptly to the appropriate supervisory office. Examples of those developments include the hiring of an independent public accountant or other third party to perform external auditing work and a change in, or termination of, an independent public accountant or other external auditor.

Appendix A—Definitions

Agencies. The agencies are the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS).

Appropriate supervisory office. The regional or district office of the institution's primary federal banking agency responsible for supervising the institution or, in the case of an institution that is part of a group of related insured institutions, the regional or district office of the institution's federal banking agency responsible for monitoring the group. If the institution is a subsidiary of a holding company, the term ''appropriate supervisory office'' also includes the federal banking agency responsible for supervising the holding company. In addition, if the institution is state-chartered, the term ''appropriate supervisory office'' includes the appropriate state bank or savings association regulatory authority.

Audit. An examination of the financial statements, accounting records, and other supporting evidence of an institution performed by an independent certified or licensed public accountant in accordance with generally accepted auditing standards (GAAS) and of sufficient scope to enable the independent public accountant to express an opinion on the institution's financial statements as to their presentation in accordance with generally accepted accounting principles (GAAP).

Audit committee. A committee of the board of directors whose members should, to the extent possible, be knowledgeable about accounting and auditing. The committee should be responsible for reviewing and approving the institution's internal and external auditing programs or recommending adoption of these programs to the full board.

Balance sheet audit performed by an independent public accountant. An examination of an institution's balance sheet and any accompanying footnotes performed and reported on by an independent public accountant in accordance with GAAS and of sufficient scope to enable the independent public accountant to express an opinion on the fairness of the balance sheet presentation in accordance with GAAP.

Engagement letter. A letter from an independent public accountant to the board of directors or audit committee of an institution that usually addresses the purpose and scope of the external auditing work to be performed, period of time to be covered by the auditing work, reports expected to be rendered, and any limitations placed on the scope of the auditing work.

Examination of the internal control structure over financial reporting. See Reporting by an Independent Public Accountant on an Institution's Internal Control Structure Over Financial Reporting.

External auditing program. The performance of procedures to test and evaluate high risk areas of an institution's business by an independent auditor, who may or may not be a public accountant, sufficient for the auditor to be able to express an opinion on the financial statements or to report on the results of the procedures performed.

Financial statement audit by an independent public accountant. See Audit.

Financial statements. The statements of financial position (balance sheet), income, cash flows, and changes in equity together with related notes.

Independent public accountant. An accountant who is independent of the institution and registered or licensed to practice, and holds himself or herself out, as a public accountant, and who is in good standing under the laws of the state or other political subdivision of the United States in which the home office of the institution is located. The independent public accountant should comply with the American Institute of Certified Public Accountants' (AICPA) *Code of Professional Conduct* and any related guidance adopted by the Independence Standards Board and the agencies. No certified public accountant or public accountant will be recognized as independent who is not independent both in fact and in appearance.

Internal auditing. An independent assessment function established within an institution to examine and evaluate its system of internal control and the efficiency with which the various units of the institution are carrying out their assigned tasks. The objective of internal auditing is to assist the management and directors of the institution in the effective discharge of their responsibilities. To this end, internal auditing furnishes management with analyses, evaluations, recommendations, counsel, and information concerning the activities reviewed.

Outside directors. Members of an institution's board of directors who are not officers, employees, or principal stockholders of the institution, its subsidiaries, or its affiliates, and who do not have any material business dealings with the institution, its subsidiaries, or its affiliates.

Regulatory reports. These reports are the Reports of Condition and Income (Call Reports) for banks, Thrift Financial Reports (TFRs) for savings associations, Federal Reserve (FR) Y reports for bank holding companies, and the H–(b)11 Annual Report for thrift holding companies.

Reporting by an independent public accountant on an institution's internal control structure over financial reporting.

[10] The institution's engagement letter is not a ''report'' and is not expected to be submitted to the appropriate supervisory office unless specifically requested by that office.

[11] When an institution's financial information is included in the audited consolidated financial statements of its parent company, the institution should provide a copy of the audited financial statements of the consolidated company and any other reports by the independent public accountant in accordance with their appropriate supervisory office's guidance. If several institutions are owned by one parent company, a single copy of the reports may be supplied in accordance with the guidance of the appropriate supervisory office of each agency supervising one or more of the affiliated institutions and the holding company. A transmittal letter should identify the institutions covered. Any notifications of changes in, or terminations of, a consolidated company's independent public accountant may be similarly supplied to the appropriate supervisory office of each supervising agency.

Under this engagement, management evaluates and documents its review of the effectiveness of the institution's internal control over financial reporting in the identified risk areas as of a specific report date. Management prepares a written assertion, which specifies the criteria on which management based its evaluation about the effectiveness of the institution's internal control over financial reporting in the identified risk areas and states management's opinion on the effectiveness of internal control over this specified financial reporting. The independent public accountant is engaged to perform tests on the internal control over the specified financial reporting in order to attest to management's assertion. If the accountant concurs with management's assertion, even if the assertion discloses one or more instances of material internal control weakness, the accountant would provide a report attesting to management's assertion.

Risk areas. Those particular activities of an institution that expose it to greater potential losses if problems exist and go undetected. The areas with the highest financial reporting risk in most institutions generally are their lending and investment securities activities.

Specified procedures. Procedures agreed-upon by the institution and the auditor to test its activities in certain areas. The auditor reports findings and test results, but does not express an opinion on controls or balances. If performed by an independent public accountant, these procedures should be performed under generally accepted standards for attestation engagements (GASAE).

By order of the Board of Directors.

Dated at Washington, DC this 15th day of October, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–27588 Filed 10–21–99; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 a.m., Wednesday, October 27, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, 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.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: October 20, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–27735 Filed 10–20–99; 11:52 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Research Agenda Subcommittee of the Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following subcommittee meeting.

Name: Research Agenda Subcommittee of the Board of Scientific Counselors.

Time and Date: 8:30 a.m.–4:10 p.m., November 3, 1999.

Place: Radisson Inn Hotel, 2061 North Druid Hills Road, Atlanta, Georgia 30329, telephone 404/321–4174.

Status: Open to the public, limited by the available space. The meeting room accommodates approximately 60 people.

Purpose: This subcommittee will meet to obtain individual advice and comments regarding the formation of ATSDR's Five-Year Environmental Public Health Research Agenda from scientific and public health partners and community and tribal constituents.

Matters To Be Discussed: Agenda items will include an overview of ATSDR's Research Program; discussions on exposure assessment; evaluation and surveillance of health effects; evaluation of chemical mixtures; health promotion and intervention; children, minorities, and other special populations; and special issues concerning tribes and communities which will help to identify research needs.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Robert F. Spengler, Sc.D., Executive Secretary, BSC, ATSDR, M/S E–28, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–0708.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 19, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–27720 Filed 10–20–99; 12:00 pm]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Health Statistics (NCHS), Data Policy and Standards Staff, Announces the Following Meeting

NAME: ICD–9–CM Coordination and Maintenance Committee meeting.

TIME AND DATE: 9 a.m.–4 p.m., November 12, 1999.

PLACE: The Health Care Financing Administration (HCFA), Auditorium, 7500 Security Boulevard, Baltimore, Maryland. In the interest of security, persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

STATUS: Open to the public, limited only by the space available. The auditorium will accommodate 500 people.

PURPOSE: The ICD–9-CM Coordination and Maintenance (C&M) Committee will hold its final meeting of the 1999 cycle on Friday, November 12, 1999. The C&M meeting is a public forum for the presentation of proposed modifications to the International Classification of Diseases, Ninth-Revision, Clinical Modification.

MATTERS TO BE DISCUSSED: Agenda items include:

Acute exacerbation of asthma & bronchiectasis
Dementia with behavioral disturbances
Postmenopausal status
Prolonged pregnancy
Plica of the knee
Update on the ICD–10–PCS coding system
Urological procedures
Neuroprotective agents
Stem cell transplantation with or without purging
Application of Anti-adhesion barrier gel in spinal surgery
Addenda

CONTACT PERSON FOR ADDITIONAL INFORMATION: Amy Blum, Medical Classification Specialist, Data Policy and Standards Staff, NCHS, 6526 Belcrest Road, Room 1100, Hyattsville, Maryland 20782, telephone 301/436–7050 ext. 164 (diagnosis), or Amy Gruber, Health Insurance Specialist, Division of Acute Care, HCFA, 7500 Security Blvd., Room C4–07–07, Baltimore, Maryland, 21244 telephone 410–786–1542 (procedures).

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 15, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–27628 Filed 10–21–99; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1060–CN]

RIN 0938–AJ57

Correction Notice—Schedules of Per-Visit and Per-Beneficiary Limitations on Home Health Agency Costs for Cost Reporting Periods Beginning on or After October 1, 1999 and Portions of Cost Reporting Periods Beginning Before October 1, 2000 (Medical Program)—ACTION

Schedules of Per-Visit and Per-Beneficiary Limitations on Home Health Agency Costs for Cost Reporting Periods Beginning on or After October 1, 1999 and Portions of Cost Reporting Periods Beginning Before October 1, 2000 (Medical Program)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of notice with comment period.

SUMMARY: In the August 5, 1999 issue of the **Federal Register** (64 FR 42766), we published a notice with comment period setting forth revised schedules of limitations on home health agency costs that may be paid under the Medicare program for cost reporting periods beginning on or after October 1, 1999. This document corrects technical errors made in that document.

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Cathy Johnson, (410) 786–5241.

SUPPLEMENTARY INFORMATION:

Background

In the August 5, 1999 notice, we announced the limitations for home health agencies for cost reporting periods beginning on or after October 1, 1999, including the per-visit limitations. We are correcting table 6A, Per-Visit Limitations, to account for an inadvertent misapplication of the 1.1 percent reduction related to the market basket update factors. The aggregate per-beneficiary limits were calculated correctly in the August 5 notice and are not affected.

In addition, there were inadvertent rounding errors and a typographical error in the three tables discussing OASIS adjustment. Due to these errors, we are correcting Table 1, Continuous Oasis Adjustment: Base; Table 2, Continuous OASIS Adjustment: 5-Year Depreciation Averaging; and Table 3, OASIS Adjustment: ''One-Time''. Below are the corrected figures and corrected Tables 1 through 3. The total continuous OASIS adjustment factor should be $.118895, rather than $.11916. The total continuous OASIS adjustment factor of $.118895 when added to the one-time OASIS adjustment of $.010267 yields an overall adjustment of $.129162.

Correction of Errors

1. On page 42771, Table 1 is corrected to read as follows:

TABLE 1.—CONTINUOUS OASIS ADJUSTMENT: BASE

[For data reporting]

Type of Adjustment	Source	Formula	Cost per visit
Audits to ensure data accuracy	University of Colorado (CHPR), BLS Occupational Employment Survey (1996), 1994 & 1995 HCFA Cost Report Data.	(((((10 records per month * 12 months)) * .25 hrs) * $25.42)/30,000 avg visits) . . . professional staff	.02542
Data entry, editing, & auditing	University of Colorado (CHPR), Estimated average salary for clerical staff 1994 & 1995 HCFA Cost Report Data.	((((8.5 hrs per month * 12) + (5 hrs per month * 12) + (1 hr per month * 12) + (5 hrs per year)) * $10 per hour) /30,000 avg visits)	.059667
Supplies	HCFA–3006–IFC OASIS Reporting (64 FR 3748), 1994 & 1995 HCFA Cost Report Data.	$250 avg cost / 30,000 avg visits	.008333
Ongoing telephone costs	Regional telephone company 1994 & 1995 HCFA Cost Report Data (for average size HHA).	((($13.14 per month, per line) + ($6.38 per month subscriber fee)) * 12 months) / 30,000 avg visits)	.007808
Total			$.101228

2. On page 42771, Table 2 is corrected to read as follows:

TABLE 2.—CONTINUOUS OASIS ADJUSTMENT: 5-YEAR DEPRECIATION AVERAGING

[For data reporting]

Type of adjustment	Source	Formula	Cost per visit
Computer Hardware: American Hospital Association's Health Data & Coding Standards Group's ''Estimated Useful Lives of Depreciable Hospital Assets'' (revised 1998)			
—Computer	Average cost for PC with minimal acceptable standards 1994 & 1995 HCFA Cost Report Data.	$2050 computer depreciated over 3 years.... (($2050/3) / 30,000 avg visits.	$.022778
—Printer	Average cost for printer with minimal acceptable standards 1994 & 1995 HCFA Cost Report Data.	$600 printer cost depreciated over 5 years... (($600/5) / 30,000 avg visits).	.004
	First 3 Year's Adjustment	* Note: computer & printer depreciation	.026778
	Next 2 Year's Adjustment	* Note: printer ONLY depreciation	.004
	5 Year Average Adjustment	((($.026778*3) + ($.004 * 2)) / 5)	.017667

3. On page 42771 and continuing on page 42772, Table 3 is corrected to read as follows:

TABLE 3.—CONTINUOUS OASIS ADJUSTMENT: ''ONE-TIME''

[For data reporting]

Type of adjustment	Source	Formula	Cost per visit
Training of Data Entry Staff	BLS Employer Provided Training (Hrs of Training (1995) & an estimated average salary for clerical personnel 1994 & 1995 HCFA Cost Report Data.	(24 hrs * $10) / 30,000 avg visits	$.008
Telephone installation	1994 & 1995 HCFA Cost Report Data	($28 processing fee) + ($40 per line connect fee) / 30,000 avg visits.	.002267
Total One Time Adjustment			.010267

4. On page 42772, the following corrections are made:

a. In the first paragraph of column 1, in line 13, ''$.101561'' is corrected to read ''$.101228''.

b. In the first paragraph of column 1, in the fifth line from the bottom, ''$.0267'' is corrected to read ''$.026778''.

c. In the second paragraph of column 1, which continues in column 2, in line 15, ''$.026777'' is corrected to read ''$.026778''.

d. In the second paragraph of column 1, in line 23, ''$.01766'' is corrected to read ''$.017667''.

e. In the second paragraph of column 1, the last sentence as continued in column 2, is corrected to read ''This yearly average computer hardware depreciation adjustment ($.017667), when added to the base continuous OASIS adjustment ($.101228), results in a total continuous OASIS adjustment of $.118895.''

f. In the first full paragraph in column 2, in line 6, ''$.0103'' is corrected to read ''$.010267''.

5. On page 42777, Table 6A is corrected in its entirety to read as follows:

TABLE 6A.—PER-VISIT LIMITATIONS

Type of visit	Per-visit limitation	Labor portion	Nonlabor portion
MSA (NECMA) location:			
Skilled nursing care	$100.81	$78.91	$21.90
Physical therapy	115.56	90.16	25.40
Speech therapy	117.06	91.40	25.66
Occupational therapy	115.97	90.46	25.51
Medical social services	141.40	110.13	31.27
Home health aide	46.43	36.39	10.04
NonMSA location:			
Skilled nursing care	111.07	90.28	20.79
Physical therapy	127.15	103.15	24.00
Speech therapy	133.00	107.68	25.32
Occupational therapy	132.50	107.01	25.49
Medical social services	174.10	141.49	32.61
Home health aides	46.66	37.98	8.68

Section 1861(v)(1)(A) of the Social Security Act (42 U.S.C. 1395x (v)(1)(A).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance)

Dated: October 15, 1999.

Brian P. Burns,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 99–27586 Filed 10–19–99; 11:43 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–8005–N]

RIN 0938–AB52

Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for 2000

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year 2000 under Medicare's hospital insurance program (Medicare Part A). The Medicare statute specifies the formulae used to determine these amounts.

The inpatient hospital deductible will be $776. The daily coinsurance amounts will be: (a) $194 for the 61st through 90th day of hospitalization in a benefit period; (b) $388 for lifetime reserve days; and (c) $97 for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit period.

EFFECTIVE DATE: This notice is effective on January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Clare McFarland, (410) 786–6390.

For case-mix analysis only: Gregory J. Savord, (410) 786–1521.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1813 of the Social Security Act (the Act) provides for an inpatient hospital deductible to be subtracted from the amount payable by Medicare for inpatient hospital services furnished to a beneficiary. It also provides for certain coinsurance amounts to be subtracted from the amounts payable by Medicare for inpatient hospital and extended care services. Section 1813(b)(2) of the Act requires us to determine and publish, between September 1 and September 15 of each year, the amount of the inpatient hospital deductible and the hospital and extended care services coinsurance amounts applicable for services furnished in the following calendar year.

II. Computing the Inpatient Hospital Deductible for 2000

Section 1813(b) of the Act prescribes the method for computing the amount of the inpatient hospital deductible. The inpatient hospital deductible is an amount equal to the inpatient hospital deductible for the preceding calendar year, changed by our best estimate of the payment-weighted average of the applicable percentage increases (as defined in section 1886(b)(3)(B) of the Act) used for updating the payment rates to hospitals for discharges in the fiscal year that begins on October 1 of the same preceding calendar year, and adjusted to reflect real case mix. The adjustment to reflect real case mix is determined on the basis of the most recent case mix data available. The amount determined under this formula is rounded to the nearest multiple of $4 (or, if midway between two multiples of $4, to the next higher multiple of $4).

Under section 1886(b)(3)(B)(i) of the Act, as amended by section 4401(a) of the Balanced Budget Act of 1997 (BBA '97) (Public Law 105–33), the percentage increase used to update the payment rates for fiscal year 2000 for hospitals paid under the prospective payment system is the market basket percentage increase minus 1.8 percentage points.

Under section 1886(b)(3)(B)(ii) of the Act, as amended by section 4411(a) of the BBA '97, the percentage increase used to update the payment rates for fiscal year 2000 for hospitals excluded from the prospective payment system depends on the hospital's allowable operating costs of inpatient hospital services. If the hospital's allowable operating costs of inpatient hospital services for the most recent cost reporting period for which information is available—

(1) Are equal to or exceed 110 percent of the hospital's target amount for that cost reporting period, the applicable percentage increase is the market basket percentage;

(2) Exceed 100 percent but are less than 110 percent of the hospital's target amount for that cost reporting period, the applicable percentage increase is the market basket percentage minus 0.25 percentage points for each percentage point by which the hospital's allowable operating costs are less than 110 percent of the target amount for that cost reporting period (but not less than 0 percent);

(3) Are equal to or less than 100 percent of the hospital's target amount for that cost reporting period, but exceed two-thirds of the target amount, the applicable percentage increase is 0 percent or, if greater, the market basket percentage minus 2.5 percentage points; or

(4) Do not exceed two-thirds of the hospital's target amount for that cost reporting period, the applicable percentage increase is 0 percent.

The market basket percentage increase for fiscal year 2000 is 2.9 percent, as announced in the **Federal Register** on July 30, 1999 (64 FR 41490). Therefore, the percentage increase for hospitals paid under the prospective payment system is 1.1 percent. The average payment percentage increase for hospitals excluded from the prospective payment system is 0.9 percent. Weighting these percentages in accordance with payment volume, our best estimate of the payment-weighted average of the increases in the payment rates for fiscal year 2000 is 1.09 percent.

To develop the adjustment for real case mix, we first calculated for each hospital an average case mix that reflects the relative costliness of that hospital's mix of cases compared to those of other hospitals. We then computed the change in average case mix for hospitals paid under the Medicare prospective payment system in fiscal year 1999 compared to fiscal year 1998. (We excluded from this calculation hospitals excluded from the prospective payment system because their payments are based on reasonable costs and are affected only by real changes in case mix.) We used bills from prospective payment hospitals received in HCFA as of April 1999. These bills represent a total of about 5.6 million discharges for fiscal year 1999 and provide the most recent case mix data available at this time. Based on these bills, the change in average case mix in fiscal year 1999 is –0.87 percent. Based on past experience, we expect the overall case mix change to be –0.6 percent as the year progresses and more fiscal year 1999 data become available.

Section 1813 of the Act requires that the inpatient hospital deductible be adjusted only by that portion of the case mix change that is determined to be real. There is a negligible change in overall case mix for fiscal year 1999. We estimate that there is no change in real case mix; that is, we estimate that the change in real case mix for fiscal year 1999 is 0.0 percent.

Thus, the estimate of the payment-weighted average of the applicable percentage increases used for updating the payment rates is 1.09 percent, and the real case mix adjustment factor for the deductible is 0.0 percent. Therefore, under the statutory formula, the inpatient hospital deductible for services furnished in calendar year 2000 is $776. This deductible amount is determined by multiplying $768 (the inpatient hospital deductible for 1999) by the payment-weighted average increase in the payment rates of 1.0109 multiplied by the increase in real case mix of 1.000, which equals $776.37 and is rounded to $776.

III. Computing the Inpatient Hospital and Extended Care Services Coinsurance Amounts for 2000

The coinsurance amounts provided for in section 1813 of the Act are defined as fixed percentages of the inpatient hospital deductible for services furnished in the same calendar year. Thus, the increase in the deductible generates increases in the coinsurance amounts. For inpatient hospital and extended care services furnished in 2000, in accordance with the fixed percentages defined in the law, the daily coinsurance for the 61st through 90th day of hospitalization in a benefit period will be $194 (one-fourth of the inpatient hospital deductible); the daily coinsurance for lifetime reserve days will be $388 (one-half of the inpatient hospital deductible); and the daily coinsurance for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit period will be $97 (one-eighth of the inpatient hospital deductible).

IV. Cost to Beneficiaries

We estimate that in 2000 there will be about 8.6 million deductibles paid at $776 each, about 2.2 million days subject to coinsurance at $194 per day (for hospital days 61 through 90), about 1.0 million lifetime reserve days subject to coinsurance at $388 per day, and about 31.7 million extended care days subject to coinsurance at $97 per day. Similarly, we estimate that in 1999 there will be about 8.5 million deductibles paid at $768 each, about 2.2 million days subject to coinsurance at $192 per day (for hospital days 61 through 90), about 1.0 million lifetime reserve days subject to coinsurance at $384 per day, and about 29.9 million extended care days subject to coinsurance at $96 per day. Therefore, the estimated total increase in cost to beneficiaries is about $360 million (rounded to the nearest $10 million), due to (1) the increase in the deductible and coinsurance amounts and (2) the change in the number of deductibles and daily coinsurance amounts paid.

V. Waiver of Proposed Notice and Comment Period

The Medicare statute, as discussed previously, requires publication of the Medicare part A inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services for each calendar year. The amounts are determined according to the statute. As has been our custom, we use general notices, rather than notice and comment rulemaking procedures, to make the announcements. In doing so, we acknowledge that, under the Administrative Procedure Act, interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking.

We considered publishing a proposed notice to provide a period for public comment. However, we may waive that procedure if we find good cause that prior notice and comment are impracticable, unnecessary, or contrary to the public interest. We find that the procedure for notice and comment is unnecessary because the formula used to calculate the inpatient hospital deductible and hospital and extended care services coinsurance amounts is statutorily directed, and we can exercise no discretion in following that formula. Moreover, the statute establishes the time period for which the deductible and coinsurance amounts will apply and delaying publication would be contrary to the public interest. Therefore, we find good cause to waive publication of a proposed notice and solicitation of public comments.

VI. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, States and individuals are not considered small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we consider a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We have determined that this notice will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing an analysis for section 1102(b) of the Act.

As stated in section IV of this notice, we estimate that the total increase in costs to beneficiaries associated with this notice is about $360 million due to (1) the increase in the deductible and coinsurance amounts and (2) the change in the number of deductibles and daily coinsurance amounts paid. Therefore, this notice is a major rule as defined in title 5, United States Code, section 804(2) and is an economically significant rule under Executive Order 12866.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

We have reviewed this notice under the threshold criteria of Executive Order 13132, Federalism. We have determined that it does not significantly affect the rights, roles, and responsibilities of States.

Authority: Sections 1813(b)(2) of the Social Security Act (42 U.S.C. 1395e–2(b)(2)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: October 13, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

Dated: October 18, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 99–27625 Filed 10–19–99; 11:35am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–8006–N]

RIN 0938–AJ80

Medicare Program; Monthly Actuarial Rates and Monthly Supplementary Medical Insurance Premium Rate Beginning January 1, 2000

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: In accordance with section 1839 of the Social Security Act, this notice announces the monthly actuarial rates for aged (age 65 or over) and disabled (under age 65) enrollees in the Medicare Supplementary Medical Insurance (SMI) program for 2000. It also announces the monthly SMI premium rate to be paid by all enrollees during 2000. The monthly actuarial rates for 2000 are $91.90 for aged enrollees and $121.10 for disabled enrollees. The monthly SMI premium rate for 2000 is $45.50. (The 1999 premium rate was also $45.50). The 2000 Part B premium is not equal to 50 percent of the monthly actuarial rate because of the differential between the amount of home health that is transferred into Part B in 2000 (three-sixths) and the amount in Part B that is included in the premium calculation (three-sevenths). Included in the monthly premium rate is $2.87 for home health services being transferred into Part B.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Carter S. Warfield, (410) 786–6396.

SUPPLEMENTARY INFORMATION:

I. Background

The Medicare Supplementary Medical Insurance (SMI) program is the voluntary Medicare Part B program that pays all or part of the costs for physicians' services, outpatient hospital services, home health services, services furnished by rural health clinics, ambulatory surgical centers, comprehensive outpatient rehabilitation facilities, and certain other medical and health services not covered by hospital insurance (HI) (Medicare Part A). The SMI program is available to individuals who are entitled to HI and to U.S. residents who have attained age 65 and are citizens, or aliens who were lawfully admitted for permanent residence and have resided in the United States for 5 consecutive years. This program requires enrollment and payment of monthly premiums, as provided in 42 CFR part 407, subpart B, and part 408, respectively. The difference between the premiums paid by all enrollees and total incurred costs is met from the general revenues of the Federal government.

The Secretary of Health and Human Services is required by section 1839 of the Social Security Act (the Act) to issue two annual notices relating to the SMI program.

One notice announces two amounts that, according to actuarial estimates, will equal respectively, one-half the expected average monthly cost of SMI for each aged enrollee (age 65 or over) and one-half the expected average monthly cost of SMI for each disabled enrollee (under age 65) during the year beginning the following January. These amounts are called ''monthly actuarial rates.''

The second notice announces the monthly SMI premium rate to be paid by aged and disabled enrollees for the year beginning the following January. (Although the costs to the program per disabled enrollee are different than for the aged, the law provides that they pay the same premium amount.) Beginning with the passage of section 203 of the Social Security Amendments of 1972 (Public Law 92–603), the premium rate, which was determined on a fiscal year basis, was limited to the lesser of the actuarial rate for aged enrollees, or the current monthly premium rate increased by the same percentage as the most recent general increase in monthly title II social security benefits.

However, the passage of section 124 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Public Law 97–248) suspended this premium determination process. Section 124 of TEFRA changed the premium basis to 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees). Section 606 of the Social Security Amendments of 1983 (Public Law 98–21), section 2302 of the Deficit Reduction Act of 1984 (DRA 1984) (Public Law 98–369), section 9313 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA 1985) (Public Law 99–272), section 4080 of the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987) (Public Law 100–203), and section 6301 of the Omnibus Budget Reconciliation Act of 1989 (OBRA 1989) (Public Law 101–239) extended the provision that the premium be based on 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees). This extension expired at the end of 1990.

The premium rate for 1991 through 1995 was legislated by section 1839(e)(1)(B) of the Act, as added by section 4301 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990) (Public Law 101–508). In January 1996, the premium determination basis would have reverted to the method established by the 1972 Social Security Act Amendments. However, section 13571 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993) (Public Law 103–66) changed the premium basis to 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees) for 1996 through 1998.

Section 4571 of the Balanced Budget Act of 1997 (BBA 1997) (Public Law 105–33) permanently extended the provision that the premium be based on 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees).

BBA 1997 included a further provision affecting the calculation of the SMI actuarial rates and premiums for 1998 though 2003. Section 4611 of BBA 1997 modified the home health benefit payable under the HI program for individuals enrolled in the SMI program. In doing so, expenditures for home health services not considered ''post-institutional'' will be payable under the SMI program rather than the HI program beginning in 1998. However, section 4611(e)(1) of BBA 1997 requires that there be a transition from 1998 through 2002 for the aggregate amount of the expenditures transferred from the HI program to the SMI program. Section 4611(e)(2) also provides a specific yearly proportion for the transferred funds. The proportions are 1/6 for 1998, 1/3 for 1999, 1/2 for 2000, 4/6 for 2001, and 5/6 for 2002. For purposes of determining the correct amount of financing from general revenues of the Federal government, it is necessary to include only these transitional amounts in the monthly actuarial rates for both aged and disabled enrollees, rather than the total cost of the home health services being transferred. Accordingly, the actuarial rates shown in this announcement reflect the net transitional cost only.

Section 4611(e)(3) of BBA 1997 also specifies, for the purposes of determining the premium, that the monthly actuarial rate for enrollees age 65 and over shall be computed as though the transition would occur for 1998 through 2003 and that 1/7 of the cost would be transferred in 1998, 2/7 in 1999, 3/7 in 2000, 4/7 in 2001, 5/7 in 2002, and 6/7 in 2003. Therefore, the transition period for incorporating this home health transfer into the premium is 7

years while the transition period for including these services in the actuarial rate is 6 years. As a result, the premium rate for this year and each of the next 3 years, through 2003, will be less than 50 percent of the actuarial rate for aged enrollees announced by the Secretary.

New section 1933(c) of the Act, as added by section 4732(c) of BBA 1997, requires the Secretary to allocate money from the SMI trust fund to the State Medicaid programs for the purpose of providing Medicare Part B premium assistance from 1998 through 2002 for the section 1933 qualifying low-income Medicaid beneficiaries. This allocation, while not being a benefit expenditure, will be an expenditure of the trust fund and has been included in calculating the SMI actuarial rates for this year. The allocation will be included in calculating the SMI actuarial rates through 2002.

As determined according to section 1839(a)(3) of the Act and section 4611(e)(3) of BBA 1997, the premium rate for 2000 is $45.50. Included in the premium rate is $2.87 for home health services being transferred into Part B.

A further provision affecting the calculation of the SMI premium is section 1839(f) of the Act, as amended by section 211 of the Medicare Catastrophic Coverage Act of 1988 (Public Law 100–360). (The Medicare Catastrophic Coverage Repeal Act of 1989 (Public Law 101–234) did not repeal the revisions to section 1839(f) made by Public Law 100–360.) Section 1839(f) provides that if an individual is entitled to benefits under section 202 or 223 of the Act (the Old-Age and Survivors Insurance Benefit and the Disability Insurance Benefit, respectively) and has the SMI premiums deducted from these benefit payments, the premium increase will be reduced to avoid causing a decrease in the individual's net monthly payment. This occurs if the increase in the individual's social security benefit due to the cost-of-living adjustment under section 215(i) of the Act is less than the increase in the premium. Specifically, the reduction in the premium amount applies if the individual is entitled to benefits under section 202 or 223 of the Act for November and December of a particular year and the individual's SMI premiums for December and the following January are deducted from the respective month's section 202 or 223 benefits.

A check for benefits under section 202 or 223 is received in the month following the month for which the benefits are due. The SMI premium that is deducted from a particular check is the SMI payment for the month in which the check is received. Therefore, a benefit check for November is not received until December, but has the December's SMI premium deducted from it. This change, in effect, perpetuates former amendments that prohibited SMI premium increases from reducing an individual's benefits in years in which the dollar amount of the individual's cost-of-living increase in benefits was not at least as great as the dollar amount of the individual's SMI premium increase.

Generally, if a beneficiary qualifies for this protection that is, the beneficiary must have been in current payment status for November and December of the previous year, the reduced premium for the individual for that January and each of the succeeding 11 months, for which he or she is entitled to benefits under section 202 or 203 of the Act is the greater of the following:

(1) The monthly premium for January reduced as necessary to make the December monthly benefits, after the deduction of the SMI premium for January, at least equal to the preceding November's monthly benefits, after the deduction of the SMI premium for December; or

(2) The monthly premium for that individual for that December.

In determining the premium limitations under section 1839(f) of the Act, the monthly benefits to which an individual is entitled under section 202 or 223 do not include retroactive adjustments or payments and deductions on account of work. Also, once the monthly premium amount has been established under section 1839(f) of the Act, it will not be changed during the year even if there are retroactive adjustments or payments and deductions on account of work that apply to the individual's monthly benefits.

Individuals who have enrolled in the SMI program late or have reenrolled after the termination of a coverage period are subject to an increased premium under section 1839(b) of the Act. The increase is a percentage of the premium and is based on the new premium rate before any reductions under section 1839(f) are made.

II. Notice of Monthly Actuarial Rates and Monthly Premium Rate

The monthly actuarial rates applicable for 2000 are $91.90 for enrollees age 65 and over, and $121.10 for disabled enrollees under age 65. Section III of this notice gives the actuarial assumptions and bases from which these rates are derived. The monthly premium rate will be $45.50 during 2000, the same as the 1999 premium rate. Included in the monthly premium rate is $2.87 for home health services being transferred into Part B.

III. Statement of Actuarial Assumptions and Bases Employed in Determining the Monthly Actuarial Rates and the Monthly Premium Rate for the Supplementary Medical Insurance Program Beginning January 2000

A. Actuarial Status of the Supplementary Medical Insurance Trust Fund

Under the law, the starting point for determining the monthly premium is the amount that would be necessary to finance the SMI program on an incurred basis. This is the amount of income that would be sufficient to pay for services furnished during that year (including associated administrative costs) even though payment for some of these services will not be made until after the close of the year. The portion of income required to cover benefits not paid until after the close of the year, is added to the trust fund and used when needed.

The rates are established prospectively and are, therefore, subject to projection error. Additionally, legislation enacted after the financing has been established, but effective for the period in which the financing has been set, may affect program costs. As a result, the income to the program may not equal incurred costs. Therefore, trust fund assets should be maintained at a level that is adequate to cover a moderate degree of variation between actual and projected costs, and the amount of incurred, but unpaid expenses. An appropriate level for assets to cover a moderate degree of variation between actual and projected costs depends on numerous factors. The most important of these factors are: (1) The difference from prior years between the actual performance of the program and estimates made at the time financing was established, and (2) the expected relationship between incurred and cash expenditures. Ongoing analysis is made of both factors as the trends vary over time.

Table 1 summarizes the estimated actuarial status of the trust fund as of the end of the financing period for 1998 and 1999.

TABLE 1.—ESTIMATED ACTUARIAL STATUS OF THE SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND AS OF THE END OF THE FINANCING PERIOD

[In billions of dollars]

Financing period ending	Assets	Liabilities	Assets less liabilities
Dec. 31, 1998	46,212	8,842	37,369
Dec. 31, 1999	43,715	3,190	40,525

B. Monthly Actuarial Rate for Enrollees Age 65 and Older

The monthly actuarial rate for enrollees age 65 and older is one-half of the monthly projected cost of benefits, the Medicaid transfer (for 1998 through 2002), and administrative expenses for each enrollee age 65 and older, adjusted to allow for interest earnings on assets in the trust fund and a contingency margin. The contingency margin is an amount appropriate to provide for a moderate degree of variation between actual and projected costs and to amortize any surplus or unfunded liabilities. As noted in section I. of this announcement, section 4611(e)(2) of BBA 1997 requires that only ½ of the cost of the home health services being transferred be included in the actuarial rate for 2000, rather than the full cost of such benefits.

The monthly actuarial rate for enrollees age 65 and older for 2000 is determined by first establishing per-enrollee cost by type of service from program data through 1998 and then projecting these costs for subsequent years. The projection factors used are shown in Table 2. The projected values for financing periods from January 1, 1997 through December 31, 2000, are shown in Table 3.

The projected monthly rate required to pay for one-half of the total of benefits, the transfer to Medicaid, and administrative costs for enrollees age 65 and over for 2000 is $106.25. Included in the total of $106.25 is $10.56 for home health services and $23.52 for managed care services. The amount of $10.56 for home health services includes (1) the full cost of fee-for-service home health services being transferred from the HI program as a result of BBA 1997 as if the transition did not apply ($10.20) as well as (2) the cost of furnishing all home health services to those individuals enrolled in SMI only ($0.36). The amount of $23.52 for managed care services includes (1) The full cost of managed care home health services being transferred from the HI program as a result of BBA 1997 as if the transition did not apply ($3.18) as well as (2) the cost of furnishing all other SMI services to those individuals enrolled in managed care plans ($20.34). Since section 4611(e)(2) of BBA 1997 requires that only ½ of the cost for those services being transferred be included in the actuarial rate for 2000, the monthly actuarial rate provides for an adjustment of −$6.69, representing ½ of the full cost of such services. The monthly actuarial rate of $91.90 also provides an adjustment of −$3.77 for interest earnings and −$3.89 for a contingency margin. Based on current estimates, it appears that the assets are more than sufficient to cover the amount of incurred but unpaid expenses and to provide for a moderate degree of variation between actual and projected costs. Thus, a negative contingency margin is needed to reduce assets to a more appropriate level.

C. Monthly Actuarial Rate for Disabled Enrollees

Disabled enrollees are those persons enrolled in SMI because of entitlement (before age 65) to disability benefits for more than 24 months or because of entitlement to Medicare under the end-stage renal disease program. Projected monthly costs for disabled enrollees (other than those suffering from end-stage renal disease) are prepared in a fashion parallel to the projection for the aged using appropriate actuarial assumptions (see Table 2). Costs for the end-stage renal disease program are projected differently because of the different nature of services offered by the program. The combined results for all disabled enrollees are shown in Table 4.

The projected monthly rate required to pay for one-half of the total of benefits, the transfer to Medicaid, and administrative costs for disabled enrollees for 2000 is $120.56. Included in the total of $120.56 is $7.71 for home health services and $12.00 for managed care services. The amount of $7.71 is the full cost of the home health services being transferred from the HI program as a result of BBA 1997 as if the transition did not apply. The amount of $12.00 for managed care services includes (1) the full cost of managed care home health services being transferred from the HI program as a result of BBA 1997 as if the transition did not apply ($1.31) as well as (2) the cost of furnishing all other SMI services to those individuals enrolled in managed care plans ($10.69). The monthly actuarial rate provides for an adjustment of −$4.51, representing ½ of the full cost of such services. Since section 4611(e)(2) of BBA 1997 requires that only ½ of the cost for those services being transferred be included in the actuarial rate for 2000, the monthly actuarial rate of $121.10 also provides an adjustment of $0.98 for interest earnings and $4.07 for a contingency margin. Based on current estimates, it appears that the assets are not sufficient to cover the amount of incurred but unpaid expenses and to provide for a moderate degree of variation between actual and projected costs. Thus, a positive contingency margin is needed to increase assets to a more appropriate level.

D. Sensitivity Testing

Several factors contribute to uncertainty about future trends in medical care costs. It is appropriate to test the adequacy of the rates using alternative assumptions. The results of those assumptions are shown in Table 5. One set represents increases that are lower and is, therefore, more optimistic than the current estimate. The other set represents increases that are higher and is therefore, more pessimistic than the current version. The values for the alternative assumptions were determined from a statistical analysis of the historical variation in the respective increase factors.

Table 5 indicates that, under the assumptions used in preparing this report, the monthly actuarial rates would result in an excess of assets over liabilities of $37,932 billion by the end of December 2000. This amounts to 39.7 percent of the estimated total incurred expenditures for the following year. Assumptions that are somewhat more pessimistic (and therefore, test the adequacy of the assets to accommodate projection errors) produce a surplus of $28,019 billion by the end of December 2000, which amounts to 25.9 percent of the estimated total incurred expenditures for the following year.

Under fairly optimistic assumptions, the monthly actuarial rates would result in a surplus of $47,863 billion by the end of December 2000, which amounts to 57.6 percent of the estimated total incurred expenditures for the following year.

E. Premium Rate

As determined by with section 1839(a)(3) of the Act and section 4611(e)(3) of BBA 1997, the monthly premium rate for 2000, for both aged and disabled enrollee, is $45.50.

TABLE 2.—PROJECTION FACTORS[1] 12-MONTH PERIODS ENDING DECEMBER 31 OF 1997–2000

[In percent]

Calendar year	Physicians' services		Durable medical equipment	Carrier lab[4]	Other carrier services[5]	Out-patient hospital	Home Health agency[6]	Hospital lab[7]	Other intermediary services[8]	Managed care
	Fees[2]	Residual[3]								
Aged:										
1997	0.6	3.1	12.0	−5.3	15.0	8.0	3.3	7.0	13.1	−0.9
1998	3.5	0.8	−2.7	−10.7	10.1	−0.1	[9] 3617.6	2.7	−4.6	21.6
1999	2.3	2.1	5.6	0.6	7.7	1.0	−19.7	5.4	−9.5	3.0
2000	5.5	1.6	6.5	1.4	7.5	4.3	4.0	4.2	1.8	5.3
Disabled:										
1997	0.6	2.2	4.8	−2.9	11.7	7.6	0.0	0.0	25.2	−11.8
1998	3.5	0.6	1.6	−0.9	7.9	−2.4	(9)	−1.9	−4.5	11.5
1999	2.3	2.0	5.5	1.0	6.5	2.6	−16.5	4.9	−7.4	0.2
2000	5.5	1.6	6.4	1.3	7.1	4.9	3.4	4.2	0.3	4.2

[1] All values for services other than managed care are per fee-for-service enrollee. Managed care values are per managed care enrollee.
[2] As recognized for payment under the program.
[3] Increase in the number of services received per enrollee and greater relative use of more expensive services.
[4] Includes services paid under the lab fee schedule furnished in the physicians office or an independent lab.
[5] Includes ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[6] From July 1, 1981 to December 31, 1997, home health agency services have been provided by the SMI program only for those SMI enrollees not entitled to HI. Otherwise these services were provided by the HI program. Since all SMI disabled enrollees are entitled to HI, their coverage of these services has been provided by the HI program during this period.
[7] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[8] Includes services furnished in rehabilitation and psychiatric hospitals, dialysis facilities, rural health clinics, federally qualified health centers, etc.
[9] Effective January 1, 1998, the coverage of home health agency services not considered ''post-institutional'' for those individuals entitled to HI and enrolled in SMI will be transferred from the HI program to the SMI program. As a result, as of January 1, 1998, there will be a large increase in SMI expenditures for these services for the aged enrollees, and SMI coverage for these services will resume for disabled enrollees.

TABLE 3.—DERIVATION OF MONTHLY ACTUARIAL RATE FOR ENROLLEES AGE 65 AND OVER FINANCING PERIODS ENDING DECEMBER 31, 1997 THROUGH DECEMBER 31, 2000

	Financing periods			
	CY 1997	CY 1998	CY 1999	CY 2000
Covered services (at level recognized):				
Physician Fee Schedule	$48.63	$49.06	$50.54	$52.87
Durable Medical Equipment	5.84	5.50	5.71	5.94
Carrier Lab[1]	2.64	2.28	2.26	2.24
Other Carrier Services[2]	7.93	8.44	8.95	9.40
Outpatient Hospital	19.17	18.52	18.42	18.76
Home health	0.34	[5] 12.64	[5] 10.15	[5] 10.56
Hospital Lab[3]	1.58	1.57	1.63	1.66
Other Intermediary Services[4]	7.30	6.74	6.00	5.97
Managed Care	13.01	[6] 18.57	[6] 20.43	[6] 23.52
Total services	106.44	123.32	124.09	130.90
Cost-sharing:				
Deductible	−3.80	−3.82	−3.84	−3.85
Coinsurance	−21.55	−22.11	−22.45	−22.79
Total benefits	81.09	97.39	97.81	104.27
Transfer to Medicaid	0.00	[7] 0.08	[7] 0.09	[7] 0.11
Administrative expenses	1.52	1.65	1.84	1.87
Incurred expenditures	82.61	99.13	99.74	106.25
Value of interest	−3.11	−3.49	−3.97	−3.77
Adjustment for home health agency services transferred from HI	0.00	[8] −12.77	[8] −8.31	[8] −6.69
Contingency margin for projection error and to amortize the surplus or deficit	8.11	5.03	4.84	−3.89
Monthly actuarial rate	$87.60	$87.90	$92.30	$91.90

[1] Includes services paid under the lab fee schedule furnished in the physicians office or an independent lab.
[2] Includes ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[3] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.

[4] Includes services furnished in rehabilitation and psychiatric hospitals, dialysis facilities, rural health clinics, federally qualified health centers, etc.

[5] This amount includes the full cost of the fee-for-service home health services being transferred from the HI program as a result of BBA 1997 as if the transition did not apply, as well as the cost of furnishing all home health services to those individuals enrolled in SMI only.

[6] This amount includes the full cost of the managed care home health services being transferred from the HI program as a result of BBA 1997 as if the transition did not apply, as well as the cost of furnishing all other SMI services to individuals enrolled in group practice prepayment plans.

[7] Section 1933(c)(2) of the Act, as added by section 4732© of BBA 1997, allocates an amount to be transferred from the SMI trust fund to the state Medicaid programs. This transfer is for the purpose of paying the SMI premiums for certain low-income beneficiaries. It is not a benefit expenditure but is used in determining the SMI actuarial rates since it is an expenditure of the trust fund.

[8] Section 4611 of BBA 1997 specifies that expenditures for home health services not considered ''post-institutional'' will be payable under the SMI program rather than the HI program beginning in 1998. However, section 4611(e)(1) requires there be a transition from 1998 through 2002 for the aggregate amount of the expenditures transferred from the HI program to the SMI program. For 1998 the amount transferred is 1/6 of the full cost for such services, and for 1999, 1/3, and for 2000, 1/2. Therefore, the adjustment for 1998 represents 5/6 of the full cost, and for 1999, 2/3, and for 2000, 1/2. This amount adjusts the actuarial rate to reflect the correct amount attributable to home health services.

TABLE 4.—DERIVATION OF MONTHLY ACTUARIAL RATE FOR DISABLED ENROLLEES FINANCING PERIODS ENDING DECEMBER 31, 1997 THROUGH DECEMBER 31, 2000

	Financing periods			
	CY 1997	CY 1998	CY 1999	CY 2000
Covered services (at level recognized):				
Physician Fee Schedule	$50.67	$51.37	$53.58	$56.87
Durable Medical Equipment	8.97	8.93	9.34	9.83
Carrier Lab [1]	3.23	2.73	2.68	2.70
Other Carrier Services [2]	9.35	9.65	10.26	10.94
Outpatient Hospital	24.78	23.65	23.81	24.59
Home health	0.00	[5] 8.93	[5] 7.46	[5] 7.71
Hospital Lab [3]	2.74	2.55	2.66	2.76
Other Intermediary Services [4]	30.70	27.88	28.25	28.72
Managed Care	6.88	[6] 9.51	[6] 10.30	[6] 12.00
Total services	137.31	145.20	148.36	156.13
Cost-sharing:				
Deductible	−3.43	−3.46	3.47	−3.48
Coinsurance	31.86	−32.42	−33.44	−34.31
Total benefits	102.02	109.32	111.44	118.34
Transfer to Medicaid	0.00	[7] 0.08	[7] 0.09	[7] 0.10
Administrative expenses	1.91	1.95	2.15	2.12
Incurred expenditures	103.93	111.35	113.69	120.56
Value of interest	−0.61	−0.11	0.75	0.98
Adjustment for home health agency services transferred from HI	0.00	[8] −8.49	[8] −5.72	[8] −4.51
Contingency margin for projection error and to amortize the surplus or deficit	7.08	−5.66	−5.71	4.07
Monthly actuarial rate	$110.40	$97.10	$103.00	$121.10

[1] Includes services paid under the lab fee schedule furnished in the physicians office or an independent lab.

[2] Includes ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.

[3] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.

[4] Includes services furnished in rehabilitation and psychiatric hospitals, dialysis facilities, rural health clinics, federally qualified health centers, etc.

[5] This amount includes the full cost of the fee-for-service home health services being transferred from the HI program as a result of BBA 1997 as if the transition did not apply.

[6] This amount includes the full cost of the managed care home health services being transferred from the HI program as a result of BBA 1997 as if the transition did not apply, as well as the cost of furnishing all other SMI services to individuals enrolled in group practice prepayment plans.

[7] Section 1933(c)(2) of the Act, as added by section 4732© of BBA 1997, allocates an amount to be transferred from the SMI trust fund to the state Medicaid programs. This transfer is for the purpose of paying the SMI premiums for certain low-income beneficiaries. It is not a benefit expenditure but is used in determining the SMI actuarial rates since it is an expenditure of the trust fund.

[8] Section 4611 of BBA 1997 specifies that expenditures for home health services not considered ''post-institutional'' will be payable under the SMI program rather than the HI program beginning in 1998. However, section 4611(e)(1) requires there be a transition from 1998 through 2002 for the aggregate amount of the expenditures transferred from the HI program to the SMI program. For 1998 the amount transferred is 1/6 of the full cost for such services, and for 1999, 1/3, and for 2000, 1/2. Therefore, the adjustment for 1998 represents 5/6 of the full cost, and for 1999, 2/3, and for 2000, 1/2. This amount adjusts the actuarial rate to reflect the correct amount attributable to home health services.

TABLE 5.—ACTUARIAL STATUS OF THE SMI TRUST FUND UNDER THREE SETS OF ASSUMPTIONS FOR FINANCING PERIODS THROUGH DECEMBER 31, 2000

As of December 31	1998	1999	2000
This Projection:			
Actuarial Status (in millions):			
Assets	$46,212	$43,715	$38,886
Liabilities	8,842	3,190	954
Assets Less Liabilities	$37,369	$40,525	$37,932

TABLE 5.—ACTUARIAL STATUS OF THE SMI TRUST FUND UNDER THREE SETS OF ASSUMPTIONS FOR FINANCING PERIODS THROUGH DECEMBER 31, 2000—Continued

As of December 31	1998	1999	2000
Ratio (in percent) [1]	45.1	44.6	39.7
Low Cost Projection:			
Actuarial Status (in millions):			
Assets	$46,212	$50,051	$48,512
Liabilities	8,842	2,486	666
Assets Less Liabilities	$37,369	$47,565	$47,863
Ratio (in percent) [1]	49.3	58.8	57.6
High Cost Projection:			
Actuarial Status (in millions):			
Assets	$46,212	$37,379	$29,260
Liabilities	8,842	3,894	1,241
Assets Less Liabilities	$37,369	$33,485	$28,019
Ratio (in percent) [1]	41.6	33.2	25.9

[1] Ratio of assets less liabilities at the end of the year to the total incurred expenditures during the following year, expressed as a percent.

IV. Regulatory Impact Analysis

We have examined the impacts of this notice as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, States and individuals are not considered small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we consider a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We have determined that this notice will not have a significant effect on a substantial number of small entities nor on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing an analysis for either the RFA or section 1102(b) of the Act.

This notice announces that the monthly actuarial rates applicable for 2000 are $91.90 for enrollees age 65 and over, and $121.10 for disabled enrollees under age 65. It also announces that the monthly SMI premium rate for calendar year 2000 is $45.50. The SMI premium rate of $45.50 for 2000 is the same as the premium rate for 1999. As a result, there is no additional cost to the approximately 37 million SMI enrollees for 2000. This notice is not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget. We have reviewed this notice under the threshold criteria of Executive Order 13132 of August 4, 1999, Federalism, published in the **Federal Register** on August 10, 1999 (64 FR 43255). The Executive Order is effective November 2, 1999, which is 90 days after the date of this Order. We have determined that the notice does not significantly affect the rights, roles, and responsibilities of States.

V. Waiver of Notice of Proposed Rulemaking

The Medicare statute requires the publication of the monthly actuarial rates and the Part B premium amounts in September. We ordinarily use general notices, rather than notice and comment rulemaking procedures, to make such announcements. In doing so, we note that under the Administrative Procedure Act; interpretive rules; general statements of policy; and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking.

We considered publishing a proposed notice to provide a period for public comment. However, we may waive that procedure if we find good cause that prior notice and comment are impracticable, unnecessary, or contrary to the public interest. We find that the procedure for notice and comment is unnecessary because the formula used to calculate the SMI premium is statutorily directed, and we can exercise no discretion in following that formula. Moreover, the statute establishes the time period for which the premium rates will apply, and delaying publication of the SMI premium rate would be contrary to the public interest. Therefore, we find good cause to waive publication of a proposed notice and solicitation of public comments.

(Section 1839 of the Social Security Act; 42 U.S.C. 1395r)

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: October 13, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

Dated: October 18, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 99–27627 Filed 10–19–99; 11:35am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–8004–N]

RIN 0938–AB53

Medicare Program; Part A Premium for 2000 for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the hospital insurance premium for calendar year 2000 under Medicare's

hospital insurance program (Part A) for the uninsured aged and for certain disabled individuals who have exhausted other entitlement. The monthly Medicare Part A premium for the 12 months beginning January 1, 2000 for these individuals is $301. The reduced premium for certain other individuals as described in this notice is $166. Section 1818(d) of the Social Security Act specifies the method to be used to determine these amounts.

EFFECTIVE DATE: This notice is effective on January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Clare McFarland, (410) 786–6390.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1818 of the Social Security Act (the Act) provides for voluntary enrollment in the Medicare hospital insurance program (Medicare Part A), subject to payment of a monthly premium, of certain persons aged 65 and older, who are uninsured for social security or railroad retirement benefits and do not otherwise meet the requirements for entitlement to Medicare Part A. (Persons insured under the Social Security or Railroad Retirement Acts need not pay premiums for hospital insurance.)

Section 1818(d) of the Act requires us to estimate, on an average per capita basis, the amount to be paid from the Federal Hospital Insurance Trust Fund for services performed, and related administrative costs incurred, in the following calendar year with respect to individuals aged 65 and over who will be entitled to benefits under Medicare Part A. We must then, during September of each year, determine the monthly actuarial rate (the per capita amount estimated above divided by 12) and publish the dollar amount for the monthly premium in the succeeding calendar year. If the premium is not a multiple of $1, the premium is rounded to the nearest multiple of $1 (or, if it is a multiple of 50 cents but not of $1, it is rounded to the next highest $1). The 1999 premium under this method was $309 and was effective January 1, 1999. (See 63 FR 56212, October 21 ,1998.)

Section 1818(d)(2) of the Act requires us to determine and publish, during September of each calendar year, the amount of the monthly premium for the following calendar year for persons who voluntarily enroll in Medicare Part A.

Section 1818A of the Act provides for voluntary enrollment in Medicare Part A, subject to payment of a monthly premium, of certain disabled individuals who have exhausted other entitlement. These individuals are those not now entitled but who have been entitled under section 226(b) of the Act, who continue to have the disabling impairment upon which their entitlement was based, and whose entitlement ended solely because they had earnings that exceeded the substantial gainful activity amount (as defined in section 223(d)(4) of the Act).

Section 1818A(d)(2) of the Act specifies that the premium determined under section 1818(d)(2) of the Act for the aged will also apply to certain disabled individuals as described above.

Section 13508 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66) amended section 1818(d) of the Act to provide for a reduction in the monthly premium amount for certain voluntary enrollees. The reduction applies for an individual who is not eligible for social security or railroad retirement benefits but who—

- Has at least 30 quarters of coverage under title II of the Act;
- Is married and has been married for the previous 1-year period to a person who has at least 30 quarters of coverage;
- Had been married for at least 1 year at the time of the person's death to a person who had at least 30 quarters of coverage; or
- Is divorced from a person who at the time of divorce had at least 30 quarters of coverage if the marriage lasted at least 10 years.

For calendar year 2000, section 1818(d)(4)(A) of the Act specifies that the monthly premium that these individuals will pay for calendar year 2000 will be equal to the monthly premium for aged voluntary enrollees reduced by 45 percent.

II. Premium Amount for 2000

Under the authority of sections 1818(d)(2) and 1818A(d)(2) of the Act, the Secretary has determined that the monthly Medicare part A hospital insurance premium for the uninsured aged and for certain disabled individuals who have exhausted other entitlement for the 12 months beginning January 1, 2000 is $301.

The monthly premium for those individuals subject to a 45 percent reduction in the monthly premium for the 12-month period beginning January 1, 2000 is $166.

III. Statement of Actuarial Assumptions and Bases Employed in Determining the Monthly Premium Rate.

As discussed in section I of this notice, the monthly Medicare part A premium for 2000 is equal to the estimated monthly actuarial rate for 2000 rounded to the nearest multiple of $1. The monthly actuarial rate is defined to be one-twelfth of the average per capita amount that the Secretary estimates will be paid from the Federal Hospital Insurance Trust Fund for services performed and related administrative costs incurred in 2000 for individuals aged 65 and over who will be entitled to benefits under the hospital insurance program. Thus, the number of individuals aged 65 and over who will be entitled to hospital insurance benefits and the costs incurred on behalf of these beneficiaries must be projected to determine the premium rate.

The principal steps involved in projecting the future costs of the hospital insurance program are (a) Establishing the present cost of services furnished to beneficiaries, by type of service, to serve as a projection base; (b) Projecting increases in payment amounts for each of the various service types; and (c) Projecting increases in administrative costs. Establishing historical Medicare part A enrollment and projecting future enrollment, by type of beneficiary, is part of this process.

We have completed all of the above steps, basing our projections for 2000 on (a) Current historical data and (b) Projection assumptions under current law from the Midsession Review of the President's Fiscal Year 2000 Budget. It is estimated that in calendar year 2000, 33.586 million people aged 65 and over will be entitled to Medicare part A benefits (without premium payment), and that these individuals will, in 2000, incur $121.285 billion of benefits for services performed and related administrative costs. Thus, the estimated monthly average per capita amount is $300.93 and the monthly premium is $301. The monthly premium for those individuals eligible to pay this premium reduced by 45 percent is $166.

IV. Costs to Beneficiaries

The 2000 Medicare part A premium of $301 is about 2.6 percent lower than the 1999 premium of $309.

We estimate that there will be, in calendar year 2000, approximately 365,000 enrollees who do not otherwise meet the requirements for entitlement, and will voluntarily enroll in Medicare part A by paying the full premium. We estimate an additional 9,000 enrollees will be paying the reduced premium. The estimated overall effect of the changes in the premium will be a savings to these voluntary enrollees of about $3 million.

V. Waiver of Notice of Proposed Rulemaking

The Medicare statute, as discussed previously, requires publication of the Medicare Part A hospital insurance premium for the upcoming calendar year during September of each year. The amounts are determined according to the statute. As has been our custom, we use general notices, rather than formal notice and comment rulemaking procedures, to make the announcements. In doing so, we acknowledge that, under the Administrative Procedure Act, interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking.

We considered publishing a proposed notice to provide a period for public comment. However, we may waive that procedure if we find good cause that prior notice and comment are impracticable, unnecessary, or contrary to the public interest. We find that the procedure for notice and comment is unnecessary because the formula used to calculate the Part A hospital insurance premium is statutorily directed, and we can exercise no discretion in following that formula. Moreover, the statute established the time period for which the premium will apply and delaying publication of the premium amount would be contrary to the public interest. Therefore, we find good cause to waive publication of a proposed notice and solicitation of public comments.

VI. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, States and individuals are not considered small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we consider a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

As stated previously in section IV, the estimated overall effect of the changes in the premium will be a savings to voluntary enrollees of about $3 million. Therefore, this notice is not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866.

Therefore, we have determined, and the Secretary certifies, that this notice will not result in a significant impact on a substantial number of small entities and will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

We have reviewed this notice under the threshold criteria of Executive Order 13132, Federalism. We have determined that it does not significantly affect the rights, roles, and responsibilities of States.

Authority: Sections 1818(d)(2) and 1818A(d)(2) of the Social Security Act (42 U.S.C. 1395i–2(d)(2) and 1395i–2a(d)(2)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: October 13, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

Dated: October 18, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 99–27626 Filed 10–19–99; 11:35 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–42]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of

applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: ENERGY: Mr. Tom Knox, Department of Energy, Office of Contract & Resource Management, MA–53, Washington, DC 20585; (202) 586–8715; GSA: Mr. Brain K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: October 14, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 10/22/99

Suitable/Available Properties

Building (by State)

Minnesota

MG Clement Trott Mem. USARC
Walker Co: Cass MN 56484–
Landholding Agency: GSA
Property Number: 54199930003
Status: Excess
Comment: 4320 sq. ft. training center and 1316 sq. ft. vehicle maintenance shop, presence of environmental conditions
GSA Number: 1–D–MN–575

Missouri

Hardesty Federal Complex
607 Hardesty Avenue
Kansas City Co: Jackson MO 64124–3032
Landholding Agency: GSA
Property Number: 54199940001
Status: Excess
Comment: 7 warehouses and support buildings (540 to 216,000 sq. ft.) on 17.47 acres, major rehab, most recent use—storage/office, utilities easement
GSA Number: 7–G–MO–637

California

Bldg. 201
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 205
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 227
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 230
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 232
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940006
Status: Unutilized
Reason: Extensive deterioration

Bldg. 337
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940007
Status: Unutilized
Reason: Extensive deterioration

Bldg. 338
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940008
Status: Unutilized
Reason: Extensive deterioration

Bldg. 339
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940009
Status: Unutilized
Reason: Extensive deterioration

Bldg. 349
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940010
Status: Unutilized
Reason: Extensive deterioration

Bldg. 362
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940011
Status: Unutilized
Reason: Extensive deterioration

Bldg. 363
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940012
Status: Unutilized
Reason: Extensive deterioration

Bldg. 410
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940013
Status: Unutilized
Reason: Extensive deterioration

Bldg. 438
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940014
Status: Unutilized
Reason: Extensive deterioration

Georgia

Facility 5001
Naval Submarine Base
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 77199940016
Status: Unutilized
Reason: Secured Area

Facility 5002
Naval Submarine Base
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 77199940017
Status: Unutilized
Reason: Secured Area

Facility 5003
Naval Submarine Base
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 77199940018
Status: Unutilized
Reason: Secured Area

Facility 5935
Naval Submarine Base
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 77199940019
Status: Unutilized
Reason: Secured Area

New Mexico

Bldg. 21, TA–2
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940001
Status: Unutilized
Reason: Secured Area

Bldg. 57, TA–2
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940002
Status: Unutilized
Reason: Secured Area

Bldg. 28, TA–8
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940003
Status: Unutilized
Reason: Secured Area

Bldg. 38, TA–14
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940004
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 8, TA–15
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940005
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 9, TA–15
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940006
Status: Unutilized
Reason: Secured Area

Bldg. 22, TA–15
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940007
Status: Unutilized
Reason: Secured Area

Bldg. 141, TA–15
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940008
Status: Unutilized
Reason: Secured Area

Bldg. 44, TA–15
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940009
Status: Unutilized
Reason: Secured Area

Bldg. 2, TA–18
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940010
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 5, TA–18
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940011
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 186, TA–18
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940012
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 188, TA–18
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940013
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 254, TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940014
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 44, TA–36
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940015
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 45, TA–36
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940016
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 19, TA–40
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940017
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 43, TA–40
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940018
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 258, TA–46
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940019
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Pennsylvania

Bldg. 603
Naval Support Station
Mechanicsburg Co: Cumberland PA 17055–0788
Landholding Agency: Navy
Property Number: 77199940015
Status: Unutilized
Reason: Extensive deterioration

Land (by State)

California

Land
Naval Construction Battalion Center
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77199940001
Status: Unutilized
Reason: Secured Area

[FR Doc. 99–27312 Filed 10–21–99; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Final Listing Priority Guidance for Fiscal Year 2000

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We (the U.S. Fish and Wildlife Service) announce final guidance for assigning relative priorities to listing actions conducted under section 4 of the Endangered Species Act of 1973 as amended (Act) during fiscal year (FY) 2000. We have returned to a more balanced listing program and have reduced the serious backlogs that remained from the 1995–96 moratorium and funding rescission. Nevertheless, a method for prioritizing among the various listing activities remains necessary because it is still extremely important for us to focus our efforts on listing actions that will provide the greatest conservation benefits to imperiled species in the most expeditious and biologically sound manner. We will no longer recognize tiers and, nationwide, we will undertake all listing activities in all priority levels simultaneously; however, we will observe relative priorities among various listing actions as described in this guidance. The highest priority will be processing emergency listing rules for any species determined to face a significant and imminent risk to its well being. Second priority is the processing

of final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will be funded separately from other section 4 listing actions and will no longer be subject to prioritization under Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 2000 as conservation efforts demand and in light of resource constraints. Delisting activities are no longer part of the listing program and have been undertaken by the recovery program since FY 1999. In addition, all listing and delisting of foreign species are carried out by the Service's International Affairs program and are not addressed in this notice.

DATES: This Listing Priority Guidance is effective immediately upon publication and will remain in effect until modified or terminated. This is internal Service guidance that will neither invoke nor relieve restrictions on the private or public sector. Therefore, in accordance with 5 U.S.C. 553(d), we have determined that good cause exists to make the effective date of this notice immediate.

ADDRESSES: Submit questions regarding this guidance to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, NW, Mailstop ARLSQ–420, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Nancy Gloman, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 703–358–2171 (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

We adopted guidelines on September 21, 1983 (48 FR 43098–43105), that govern the assignment of priorities to species under consideration for listing as endangered or threatened under section 4 of the Act. We adopted those guidelines to establish a rational system for allocating available appropriations to the highest priority species when adding species to the lists of endangered or threatened wildlife and plants or reclassifying threatened species to endangered status. The system places greatest importance on the immediacy and magnitude of threats, but also factors in the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera, full species, and subspecies (or, equivalently, distinct population segments of vertebrates). However, this system does not provide for prioritization among different types of listing actions such as preliminary determinations, proposed listings, and final listings.

Serious backlogs of listing actions resulted from the 1995–96 listing moratorium and funding rescission. The enactment of Public Law 104–6 in April 1995 rescinded $1.5 million from our budget for carrying out listing activities through the remainder of FY 1995. Public Law 104–6 prohibited the expenditure of the remaining appropriated funds for final determinations to list species or designate critical habitat which, in effect, placed a moratorium on those activities. For more than half of FY 1996, we operated without a final budget due to a series of continuing resolutions. Those continuing resolutions continued the moratorium and provided almost no funds for listing. The net effect of the moratorium and the limited funding provided by continuing resolutions was that our listing program was essentially shut down. The moratorium on final listings and the budget constraints remained in effect until April 26, 1996, when President Clinton approved the Omnibus Budget Reconciliation Act of 1996 and waived the moratorium. At that time, we had accrued a backlog of proposed listings for 243 species. The limited funding available for listing activities generally precluded petition processing and the development of proposed listings from October 1, 1995, through April 26, 1996.

When the moratorium was lifted and funds were appropriated for the administration of the listing program, we faced the considerable task of allocating the available resources to the significant backlog of listing activities. The Final Listing Priority Guidance for FY 1996 was published on May 16, 1996 (61 FR 24722). We followed that three-tiered approach until the Final Listing Priority Guidance for FY 1997 was published on December 5, 1996 (61 FR 64475). The FY 1997 Listing Priority Guidance employed four tiers for assigning relative priorities to listing actions to be carried out under section 4 of the Act. Tier 1, the highest priority, was the processing of emergency listings for species facing a significant risk to their well-being. Processing final decisions on pending proposed listings was assigned to Tier 2. Tier 3 was to resolve the conservation status of species identified as candidates and processing 90-day or 12-month administrative findings on petitions to list or reclassify species from threatened to endangered status. Preparation of proposed or final critical habitat designations and processing reclassifications were assigned lowest priority (Tier 4). We published Listing Priority Guidance for FY 1998 and 1999 on May 8, 1998 (63 FR 25502), and employed a three-tiered system. Emergency actions comprised Tier 1, all other listing actions except critical habitat designation were included in Tier 2, and critical habitat designation was the lowest priority, or Tier 3.

While operating the listing program under the Final FY 1998 and FY 1999 Listing Priority Guidance, we focused our resources on completing Tier 2 activities. Two emergency listing actions (for the San Bernardino kangaroo rat (63 FR 3835) and Jarbidge population of bull trout (63 FR 42757)) were necessary in FY 1998. During FY 1998, we made final determinations for 57 species (47 final listings and 10 withdrawals). As a result of this expeditious progress, only 84 proposed species remained at the end of FY 1998 (including 42 newly proposed species). We published petition findings for 18 species (11 90-day findings and seven 12-month findings). We proposed one species, the peregrine falcon in North America, for delisting during FY 1998. Since the end of FY 1998, and up to July 31, 1999, 38 final determinations, 18 proposed rules, 15 petition findings, five proposed delistings, one final delisting, and two proposed and three final critical habitat designations have been completed. The proposed critical habitat designations, Tier 3 activities, were undertaken to comply with court orders. However, we did make critical habitat determinations (prudency and/or determinability decisions) for each final listing during FY 1998 and through July 30, 1999.

Despite the return to a more balanced listing program, backlogs remain. As of July 31, 1999, there are 66 proposed species awaiting final determinations, and 154 candidates awaiting resolution of their conservation status. Fifty-three species have pending 90-day petition findings and 22 species have pending 12-month petition findings. Various district courts and appellate courts have

remanded not prudent critical habitat determinations to us for reconsideration. Currently, we have to reconsider not prudent determinations for 245 Hawaiian Island plants and four vernal pool fairy shrimp that courts have remanded.

As stated in the FY 1998 and FY 1999 Listing Priority Guidance, it is important to recognize that we face even greater backlogs in our responsibilities to implement other aspects of the Act. The section 7 consultation and habitat conservation planning (HCP) backlogs continue to grow. The backlog of species awaiting Recovery Plans and the shortage of funding used for recovery implementation make the recovery backlog most severe. We base our funding requests on the workloads faced by all activities of the endangered species program. In FY 1999, the Department of the Interior requested significant increases in funding for all endangered species activities, but proportionally less for the listing program. The magnitude of the other endangered species backlogs exceeds the listing backlog, and was therefore reflected in the overall Department of the Interior funding request that included larger increases for the other endangered species programs.

In enacting the Department of the Interior's FY 1999 Omnibus and Emergency Supplemental Appropriations Act (Public Law 105–277), Congress provided only modest increases. Congress included in the Department of the Interior's FY 1998 appropriation an express limit on the amount to be spent on listing actions (including the designation of critical habitat); that continues this year, and the limit is $5.756 million.

Even with the gradual reduction of the backlogs of proposed species pending final action, candidate species awaiting proposal, and petitions awaiting administrative findings, it is extremely important for us to focus our efforts on listing actions that will provide the greatest conservation benefits to imperiled species in the most expeditious and biologically sound manner. It has been longstanding policy (1983 Listing and Recovery Priority Guidelines (48 FR 43098)) that the order in which species should be processed for listing is based primarily on the immediacy and magnitude of the threats they face. We will continue to base decisions regarding the order in which species will be proposed or listed on the 1983 listing priority guidelines. We also must continue to prioritize among types of listing actions and this level of relative prioritization is the guidance provided below.

Analysis of Public Comments

On May 20, 1999, we published a notice in the **Federal Register** (63 FR 10931) announcing proposed listing priority guidance for FY 1999 and FY 2000 and solicited public comment on that proposed guidance. We received two letters of comment on the proposed guidance (in two separate mailings) within the 30-day comment period specified in the Notice of Proposed LPG for FY 1999 and 2000. One letter was generally in favor of the proposed guidance and one letter was generally opposed. A summary of the issues raised and our response follows.

Issue 1: The order for processing species listings should be based on the immediacy and magnitude of the threats facing the species, as outlined in the proposed Listing Priority Guidance. The priorities for listing proposed in the guidance (emergency listings, final decisions, resolving the status of candidate species, processing administrative petition findings) will help to ensure the greatest conservation benefits for imperiled species in the most expeditious and biologically sound manner.

Response 1. We agree that the priorities outlined in the proposed Listing Priority Guidance are sound. We developed our priority system in order to provide the Act's protection to the most imperiled species as quickly as possible. We received no additional information or comments during the comment period that required the re-examination or revision of these priorities.

Issue 2. Delisting activities are most appropriately undertaken by the Service's Recovery Program, and the Service should provide a funding amount that will be allocated within the Recovery Program specifically for completing delisting actions.

Response 2. We agree that delisting actions should be accomplished through our recovery program, instead of the listing program. Although delisting activity is not a separate line item in Service budget requests or Congressional appropriations, beginning in 1999, work on delisting was included in the line item for the recovery program. Prior to that time it was included in the line item for the listing program. For Fiscal Year 1999, a total of $1 million was allocated to our regions for work specifically related to delisting or reclassification actions, and we plan to continue allocating a specific amount of recovery funds for this purpose in future years.

Issue 3. Many of the Service's administrative and funding problems related to listing activities are indicative of the larger problem of insufficient attention to species prior to the need to list them. The Service should continue to construct conservation agreements and habitat conservation plans, and should seek additional ways to address conservation issues proactively, in a manner that will preclude the need for listing whenever possible.

Response 3. Efforts to conserve species and their habitats prior to the need to list are extremely important. Initiating or expanding conservation actions before a species and its habitat are critically imperiled makes it more likely that simpler, more cost-effective conservation options will still be available and that conservation will ultimately be successful. In addition, removing the need to list a species through early conservation actions maintains land use and development flexibility for landowners. Our candidate conservation program involves a collaborative approach with States and Territories, other Federal agencies, and the private sector to identify species that are in need of conservation actions. In cooperation with our partners, we plan and implement conservation actions to stabilize or conserve species and their habitats, thus reducing and removing threats so that Federal listing is not necessary. We note that our efforts to conserve candidate species do not come at the expense of the listing program, as candidate conservation is funded by a separate budget line-item.

We recently published final policies on Safe Harbor Agreements and Candidate Conservation Agreements with Assurances (CCAA) (June 17, 1999; 64 FR 32726). These Agreements are becoming extremely important and effective candidate conservation tools. The CCAA policy offers assurances as an incentive for non-Federal property owners to implement conservation measures for species that are proposed for listing, species that are candidates for listing, and species that are likely to become candidates in the near future. In turn, property owners receive assurances that additional conservation measures will not be required and additional land, water, or resource use restrictions will not be imposed should the species become listed in the future. We agree that proactive conservation actions are vitally important and should be initiated as early as possible. We encourage Federal, State, and private partners to continue working with us to remove and reduce threats to imperiled species so that listings may be precluded.

Issue 4. If the Service's Listing Priority Guidance permits statutorily defined deadlines to be exceeded, the Listing Priority Guidance violates the Act. The Service should establish a listing procedure that guarantees that each deadline will be met. This procedure should include the following: uniform intermediate deadlines that Service listing staff must meet, elimination of multiple intermediate reviews, elimination of multiple public comment periods and comment period extensions, and elimination of reviews as required under various Executive Orders (Executive Orders provide that they cannot cause non-compliance with statutes). If necessary, imperfect decisions can be made in order to comply with the mandated deadlines, and remedied later with revisions.

Response 4. Contrary to the commenter's assertion, the Listing Priority Guidance does not ''permit'' statutorily defined deadlines to be exceeded. It is an unfortunate fact that some of those deadlines will be exceeded with or without the Listing Priority Guidance. The conflict between the listing actions required and deadlines imposed by the Act and the appropriations provided by Congress make it impossible for the Service to avoid delaying compliance with the Act. Therefore, until Congress provides adequate funding, the relevant question is not whether we will delay taking some listing actions required by the Act, but what actions will we delay and with respect to what species. In the Listing Priority Guidance, we have created a uniform policy for answering these questions. The Listing Priority Guidance improves our efficiency, thereby minimizing the need for such delays, and helps us determine which delays of the Act will be of the least consequence to imperiled species. Thus, the LPG is our blueprint for working to comply with the Act while providing the most conservation benefit in furthering the purposes of the Act.

We have established a listing procedure through which we endeavor to meet statutory and regulatory guidelines to the extent made possible by the annual appropriations for listing activities. We are committed to making listing determinations based on the best available scientific and commercial information as required by the Act. Violation of this standard is no less a violation of the Act than missing a statutory deadline. The opening of public comment periods is necessary to ensure that the public has ample opportunity to provide us with any pertinent information of which we may not be aware. Our agency review process, which does contain internal deadlines for certain review stages, is necessary to ensure that the best available information has been used to make the most appropriate listing decision. In addition, various Executive Orders, such as Executive Order 12866, require that we obtain external review prior to publication of proposed and final listing rules. Under this Executive Order, the Office of Management and Budget must review significant regulatory actions. Coordinated review of agency rulemaking is necessary to ensure that regulations are consistent with applicable law and the President's priorities, and that decisions made by one agency do not conflict with the policies or actions taken or planned by another agency. This Executive Order requires the Office of Management and Budget to complete its review within 90 calendar days of receipt of the rule. In cases where a statutory or court-ordered deadline is applicable, this Executive Order directs agencies to schedule rulemakings, to the extent practicable, so as to permit sufficient time for the Office of Management and Budget to complete its review prior to the deadline. In some cases where courts have imposed very short deadlines for completion of rules, this has not been practicable. Lastly, we regularly review and revise the status of species after they have been listed when additional information is obtained that indicates such revision is appropriate. We will not knowingly issue ''imperfect decisions'' in order to expedite listing actions to meet mandated deadlines as suggested by the commenter.

Issue 5. The proposed Listing Priority Guidance states that ''[c]ritical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately.'' The Act does not allow this separation.

Response 5. It is true that Section 4(a)(3) of the Act requires that critical habitat be designated concurrently with listing to the maximum extent prudent and determinable. However, as discussed in our response to Issue 4, we are unable to comply with all of the requirements of the Act at current funding levels. In some cases, making prudency and determinability findings, as well as actual critical habitat designations, will divert limited listing resources from other listing actions required by the Act. Therefore, in appropriate cases, we will delay all critical habitat determinations for a species in order to comply with other statutory requirements that provide greater conservation benefit in furtherance of the purposes of the Act.

Issue 6. The Service's position that critical habitat is relatively unimportant is contradicted by the Act and its legislative history.

Response 6. We believe that protection of habitat is paramount to successful species' conservation. On June 14, 1999, we published a Notice of Intent to Clarify the Role of Habitat in Endangered Species Conservation (64 FR 31871). As we stated in that notice, we believe that the process of habitat protection via critical habitat designation is most properly examined in the broad context of the overall importance of habitat in endangered species conservation.

> Habitat considerations are a key part of virtually every process called for in the Act. We describe the habitat needs of species, and threats to habitat, in detail in all listing rules. In fact, Factor A of the ''Summary of Factors Affecting the Species'' section of all proposed and final listing rules discusses ''The Present or Threatened Destruction, Modification, or Curtailment of the Habitat or Range'' of the species. For most species, the threats to habitat are the most important consideration when determining if a species qualifies for protection under the Act. Habitat considerations are prominent in all recovery plans, and recovery plans include maps and descriptions of the habitat needed to recover the species. The section 7 consultation process addresses the dynamic and seasonal characteristics of the habitat needs of listed species. New information concerning species' habitat use becomes available throughout the listing, consultation, habitat conservation planning, and recovery processes. It is essential that we consider current and complete habitat information in these processes. The analysis of habitat alteration and/or destruction is the cornerstone of the Act's section 7 consultation process and the section 10 habitat conservation planning process; this is true for species that have designated critical habitat, as well as for those species that do not. Habitat is identified, communicated to affected parties, protected, and conserved through all phases of applying the Act's protections. The conservation and recovery of imperiled species are dependent upon habitat protection and restoration. When species are listed as threatened or endangered, the habitats or ecosystems upon which they depend are recognized. Conservation and recovery actions are directed not only to the imperiled species, but to the species' habitat, as well. (64 FR 31871).

The designation of critical habitat has only one regulatory impact: under section 7(a) (2), Federal agencies must, in consultation with us, insure that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. Destruction or adverse modification is a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the

survival and recovery of a listed species. However, section 7 also prohibits Federal agencies from taking actions that jeopardize the continued existence of a listed species. To jeopardize the continued existence of a species is to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of species. For almost all species, the section 7 critical habitat adverse modification and jeopardy standards are the same, resulting in an unnecessarily duplicative and expensive regulatory process.

Therefore, while we firmly believe that attention to and protection of habitat is paramount to successful conservation actions, we have found that, in most circumstances, the designation of ''official'' critical habitat is of little additional value for most listed species.

Issue 7. The Service's position that it will not allow litigation to affect its priorities violates the Act's citizen suit provision, and unnecessarily burdens the courts and others with protracted litigation. The Service should respond to 60-day notices and enter into settlement agreements to avoid protracted litigation.

Response 7. As we stated in the proposed Listing Priority Guidance (64 FR 27596), we will not adjust our biological priorities to reflect the threat of litigation. This position does not violate the Act's provision that allows for citizen suits. According to section 11 (g) (1) (c), any person may commence a civil suit on his own behalf against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under section 4 which is not discretionary with the Secretary. In cases where such citizen suits have been filed regarding the processing of listing actions in accordance with our Listing Priority Guidance, we continue to seek from the courts recognition of our need to allocate our limited listing budget so as to best fulfill the spirit and intent of the Act. We will, of course, comply with all court orders. When possible and when consistent with our biologically-based priorities, we have entered into, and will continue to seek settlement agreements to resolve outstanding litigation. However, adopting the commenter's position would result in allocating scarce resources based on litigation rather than biology. For instance, in response to litigation, we might spend our entire listing budget designating critical habitat for species already listed and therefore subject to most of the protections of the Act, while a gravely imperilled species without the benefit of an interested litigant would be denied the Act's protection.

Final Listing Priority Guidance for Fiscal Year 2000

Relative Listing Priorities

Nationwide in FY 2000, we will undertake the full array of listing actions consistent with the relative priority guidance described below. However, some Regions and some Field Offices within Regions have significant backlogs of proposed species, candidates, and petitions. Therefore, additional guidance is needed to clarify the relative priorities among the various listing activities.

Completion of emergency listings for species facing a significant risk to their well-being remains our highest priority. Emergency actions take precedence over all other section 4 listing actions. With the exception of emergency actions, all other listing activities may be undertaken simultaneously. Regions should assign relative priorities for their remaining non-emergency listing actions based on the following priority levels. Processing final decisions on pending proposed listings are Priority 2 actions. Priority 3 actions are the resolution of the conservation status of species identified as candidates (resulting in a new proposed rule or a candidate removal). Priority 4 actions are the processing of 90-day or 12-month administrative findings on petitions.

The processing of petitions requesting critical habitat designations and the preparation of proposed and final critical habitat determinations and/or designations will no longer be prioritized with other section 4 listing actions. Critical habitat actions will be conducted within a specified amount of funding ($979,000 (17% of total) for FY99) which has been set aside out of the listing subactivity.

Priority 1—Emergency Listing Actions

We will immediately process emergency listings for any species of fish, wildlife, or plant that faces a significant and imminent risk to its well-being under the emergency listing provisions of section 4(b)(7) of the Act. This includes preparing a proposed rule to list the species. Every petition to list a species or reclassify a threatened species to endangered will be reviewed in order to determine whether an emergency situation exists. If the initial review indicates an emergency situation, the action will be a Priority 1 action and an emergency rule to list the species will be prepared immediately. Emergency listings are effective for 240 days. A proposed rule to list the species is usually published concurrently with the emergency rule to ensure that the final listing and full protection of the Act are established before the 240-day emergency protection expires. If the initial review does not indicate that emergency listing is necessary, processing of the petition will be assigned to Priority 4 as discussed below.

Priority 2—Processing Final Decisions on Proposed Listings

Proposed species are just one step away from receiving the most important protections under the Act. The majority of the unresolved proposed species face high-magnitude threats. By focusing our efforts on completing final determinations, we can provide the maximum conservation benefits to the largest numbers of those species that are in greatest need of the Act's protections. As proposed listings are reviewed and processed, they will be completed through publication of either a final listing or a withdrawal of the proposed listing. Completion of a withdrawal may not appear consistent with the conservation intent of this guidance. However, once a determination not to make a proposed listing final has been made, publishing the withdrawal of the proposed listing takes minimal time and appropriations. Thus, it is more cost effective and efficient to bring closure to the proposed listing than it is to postpone the action and take it up at some later time.

Priority 3—Resolving the Conservation Status of Candidate Species (Resulting in a New Proposed Rule or a Candidate Removal)

The publication of new proposals (candidate conservation resolution) to add species to the lists of threatened and endangered species has significant conservation benefit. Under the 1983 listing priority guidelines, proposed rules dealing with taxa believed to face imminent, high-magnitude threats have the highest relative priority within Priority 3. If an emergency situation exists, the species will be elevated to Priority 1. Proposed listings that cover multiple species facing high-magnitude threats have priority over single-species proposed rules unless we have reason to believe that the single-species proposal should be processed first to avoid possible extinction. Proposed listings for species facing high-magnitude threats that can be quickly completed have higher priority than proposed rules for species with equivalent listing

priorities that require extensive work to complete.

Issuance of a new proposed listing is the first formal step in the regulatory process for listing a species. It provides some protection in that all Federal agencies must ''confer'' with us on actions that are likely to jeopardize the continued existence of proposed species. The resolution of a candidate species' conservation status will be accomplished through the publication of new proposed rules or the processing of candidate removal forms (which, when signed by the Director, remove species from the candidate list). Candidate species include species petitioned for listing, for which we have made a warranted but precluded finding pursuant to section 4(b)(3)(B)(iii) of the Act.

Priority 4—Processing Administrative Findings on Petitions to Add Species to the Lists and Petitions to Reclassify Species

The processing of 90-day petition findings and 12-month petition findings to add species to the lists or reclassify species will be Priority 4 activities. Once a 90-day petition finding is published, we will make every reasonable effort to complete the 12-month finding in the appropriate time frame. When it is practicable for us to complete a 90-day finding within 90 days, we are statutorily afforded a 12-month period from the receipt of a petition to completion of the 12-month finding. However, in those cases in which it is not practicable for us to complete a 90-day finding within 90 days of receipt of the petition, after the 90-day finding is completed, we will require 9 months to complete a thorough biological status review and issue a 12-month finding.

Allocating Listing Resources Among Regions

We allocate the listing appropriation among our seven Regions based strictly on the number of proposed and candidate species for which the Region has lead responsibility, with the exception of providing minimum ''capability funding'' for each Region. The objective is to ensure that those areas of the country with the largest percentage of known imperiled species will receive a correspondingly high level of listing resources. Our experience in administering the Act for the past twenty five years has shown, however, that we need to maintain at least a minimal listing program in each Region in order to respond to emergencies and to retain a level of expertise that permits the overall program to function effectively over the longer term, thus the ''capability funding'' to each Region. In the past, when faced with seriously uneven workloads, we have experimented with reassigning workloads from heavily burdened Regions to less burdened Regions. This approach has proven to be very inefficient because the expertise developed by a biologist who works on a species' listing is useful in recovery planning and other conservation activities for that species. Additionally, biologists in a Region are familiar with other species in that Region that interact with the species proposed for listing, and that knowledge is useful in processing a final decision. For these reasons, we have found it unwise to reassign one Region's workload to personnel in another Region. Because we must maintain a listing program in each Region, Regions with few outstanding proposed listings may be able to address more lower priority listing actions, while Regions with many outstanding proposed listings will use most of their allocated funds on Priority 2 actions (finalizing proposed listings) or Priority 3 actions (completing new proposals to add species to the lists). It is the responsibility of individual Regions to recognize their workloads and backlogs and undertake priorities (1–4) as their regional workloads permit. We will provide critical habitat funding on a project-by-project basis in FY 2000.

Addressing Matters in Litigation

The numerous statutory responsibilities we bear under the Act do not come with an unlimited budget. We are sometimes required to make difficult choices about how to prioritize carrying out those statutory responsibilities in order to make the best use of our limited resources. Under these circumstances, technical compliance with the various sections of the Act with respect to one species can mean failure to comply with the other technical requirements of the Act for the same or another species. This guidance is part of a continuing effort to strive to achieve compliance with the Act in the manner that best fulfills the spirit of the Act, using our best scientific expertise.

Individuals or organizations occasionally bring suit against us for failing to carry out specific actions with regard to specific species. Many of these suits question our judgment and priorities, and seek compliance with the Act in circumstances that do not, in our judgment, lead to the best use of our resources to provide the maximum conservation benefit to all species. In many of the outstanding section 4 matters currently in litigation, the effect of what the plaintiff seeks is to require us to postpone or sacrifice conservation actions that we believe would have major conservation benefits in favor of actions that we believe would have lesser conservation benefits.

In no case will we adjust our biological priorities to reflect the threat of litigation. We have sought and will continue to seek from the courts recognition of our need to allocate our limited listing budget so as to best fulfill the spirit of the Act. We will, of course, comply with all court orders.

National Environmental Policy Act

We do not consider the implementation of this guidance to be a major Federal action significantly affecting the quality of the human environment for the purposes of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Further, the Department of the Interior's Departmental Manual (DM) categorically excludes from consideration under NEPA, ''Policies, directives, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature or the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case.'' This guidance clearly qualifies as an administrative matter under this exclusion. We also believe that the exceptions to categorical exclusions (DM 2 Appendix 2) would not be applicable to such a decision, especially in light of environmental effects for such action.

Authority

The authority for this notice is the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Dated: September 15, 1999.

Marshall P. Jones,

Acting Director,

U.S. Fish and Wildlife Service.

[FR Doc. 99–27689 Filed 10–21–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–(962)–4230–15]

Alaska; Notice for Publication, F–14908–B, Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is

hereby given that the decision to issue conveyance (DIC) to Sitnasuak Native Corporation, notice of which was published in the **Federal Register**, on September 22, 1998, is modified.

A notice of the modified DIC will be published once a week, for four (4) consecutive weeks, in the Nome Nugget. Copies of the modified DIC may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until November 22, 1999 to file an appeal on the issues in the modified DIC. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR P

art 4, Subpart E, shall be deemed to have waived their rights.

Except as modified, the decision, notice of which was given September 22, 1998, is final.

Jane Miller,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 99–27632 Filed 10–21–99; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

DEPARTMENT OF AGRICULTURE

Bureau of Land Management

Forest Service

[MT–060–08–1220–00, 1617P]

Notice of Availability of the Draft Off-Highway Vehicle Environmental Impact Statement and Plan Amendment

AGENCY: Bureau of Land Management, Interior and Forest Service, Agriculture.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) and Forest Service (FS) have prepared a Draft Off-Highway Vehicle Environmental Impact Statement (EIS) and Plan Amendment. The Draft EIS/Plan Amendment describes the analysis completed on the proposed management changes in off-highway vehicle (OHV) use on public lands administered by the BLM and FS, Northern Region, in Montana, North Dakota, and portions of South Dakota. Five alternatives, including a No Action Alternative, were developed to meet the purpose and need of the project and respond to significant issues. The purpose and need are to address the impacts of OHV travel on open areas that are currently available to motorized cross-country travel. The No Action Alternative would maintain current management. Areas currently open yearlong or seasonally to cross-country travel would remain open. Alternatives 1 and 2 would restrict motorized cross-country travel yearlong. Alternative 3 would restrict motorized cross-country travel yearlong in North Dakota, most of Montana, and portions of South Dakota. Alternative 4 would limit motorized cross-country travel seasonally.

DATES: The comment period on the Draft EIS/Plan Amendment will end 90 days from the date the Environmental Agency publishes the notice of availability in the **Federal Register**. The expected end of the comment period is February 3, 2000. Open houses on the Draft EIS/Plan Amendment will be held in communities in Montana, North Dakota, and South Dakota during the review period. The locations for the open houses are listed below but also look for an article in your local paper because locations, dates and/or time may change.

Date	Location	Time (p.m.)	Place
November 15	Lemmon, SD	2:00–6:00	To be determined.
November 16	Buffalo, SD	2:00–6:00	Harding County Jury/Court Room.
November 16	Hamilton, MT	4:00–8:00	To be determined.
November 16	Libby, MT	4:00–9:00	Libby City Hall, Ponderosa Room.
November 17	Pierre, SD	2:00–6:00	RAMKOTA.
November 17	Kalispell, MT	5:00–8:00	Outlaw Inn.
November 17	Trout Creek, MT	1:00–4:00	U.S. Forest Service.
November 18	Belle Fourche, SD	2:00–6:00	BLM Office.
November 18	Eureka, MT	6:00–9:00	Lincoln Co. Electric.
November 18	Lewistown, MT	4:00–7:00	BLM Office, Airport Road.
November 19	Ekalaka, MT	2:00–6:00	Carter Country Jury/Court Room.
November 22	Great Falls, MT	4:00–7:00	BLM/FS Office, 1101 15th Street North.
November 22	Bozeman, MT	4:00–8:00	Gallatin Co Courthouse, 311 West Main.
November 29	Bowman, ND	4:00–8:00	To be determined.
November 30	Dickinson, ND	4:00–8:00	BLM Office, 2933 Third Avenue West.
November 30	Billings, MT	4:00–8:00	BLM Office, 5001 Southgate Drive.
November 30	Miles City, MT	5:00–7:00	BLM Office, 111 Garryowen Road.
December 1	Bismarck, ND	4:00–8:00	U.S. Forest Service, 240 West Century.
December 1	Red Lodge, MT	4:00–8:00	U.S. Forest Service.
December 1	Colstrip, MT	5:00–7:00	Bicentennial Library, 415 Willow Avenue.
December 2	Watford City, ND	4:00–8:00	To be determined.
December 2	Lincoln, MT	4:00–8:00	Lincoln Community Hall.
December 2	Glendive, MT	5:00–7:00	Glendive Medical Center, Carney Conference Room #2.
December 3	Rapid City, SD	3:00–7:00	West River Research & Ag. Crt., 1905 Plaza Blvd.
December 6	Townsend, MT	4:00–8:00	Townsend Library.
December 7	Missoula, MT	4:00–8:00	Boone and Crocket Club.
December 7	Malta, MT	4:00–7:00	BLM Office.
December 7	Havre, MT	4:00–7:00	BLM Office.
December 7	Broadus, MT	5:00–7:00	Powder River County Courthouse, Election Rm.
December 8	Helena, MT	4:00–8:00	U.S. Forest Service, 2880 Skyway Drive.
December 8	Glasgow, MT	4:00–7:00	BLM Office.
December 9	Dillon, MT	4:00–8:00	U.S. Forest Service, 420 Barrett Street.

Date	Location	Time (p.m.)	Place
December 9	Butte, MT	4:00–8:00	BLM Office, 106 North Parkmont.
December 14	Browning, MT	3:30–7:00	Tribal Offices.
December 15	Choteau, MT	2:00–7:00	Stage Stop Inn.

ADDRESSES: Address all comments to OHV Plan Amendment, Lewistown Field Office, P.O. Box 1160, Lewistown, MT 59457–1160.

Comments, including names and street addresses of respondents, will be available for public review at the above Lewistown address during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Jerry Majerus, 406–538–1924 or Dick Kramer, 406–329–1008.

SUPPLEMENTARY INFORMATION: This Draft EIS/Plan Amendment discloses the potential environmental consequences of managing cross-country off-highway vehicle (OHV) use on public lands administered by the BLM and FS, Northern Region, in Montana, North Dakota, and portions of South Dakota (excluding the Black Hills National Forest, Buffalo Gap Grasslands and the Fort Pierre Grasslands). The agencies recognize that many recreation users do not differentiate between BLM and FS lands. The agencies feel it is better customer service to have consistent policies across agency boundaries; therefore, the plan amendment will be a joint BLM and FS proposal. The BLM and FS are joint lead agencies responsible for preparation of the EIS/plan amendment.

The increased popularity and widespread use of OHVs on public lands in the 1960s and early 1970s prompted the development of a unified federal policy for such use. Executive Order 11644 was issued in 1972 and Executive Order 11989 was issued in 1977. They provided direction for federal agencies to establish policies and provide for procedures to control and direct the use of OHVs on public lands so as to (1) protect the resources of those lands, (2) promote the safety of all users of those lands, and (3) minimize conflicts among the various uses on those lands. The BLM and FS have developed regulations in response to the Executive Orders (43 CFR 8342 and 36 CFR 219 and 295). Under those regulations, OHV use can be restricted or prohibited to minimize (1) damage to the soil, watershed, vegetation, or other resources of the public lands; (2) harm to wildlife or wildlife habitats; and (3) conflict between the use of OHVs and other types of recreation.

The BLM and FS recognize in their respective resource management plans and forest plans, policy, and manual direction, that off-highway vehicle use is a valid recreational activity when properly managed. Managing this use along with other recreation uses and the need to protect resource values has become increasingly more difficult with increasing public demands and decreasing budgets.

The purpose of this EIS/plan amendment is to address the impacts of wheeled (motorcycles, four-wheel drive vehicles, sport utility vehicles, all-terrain vehicles, etc.) off-highway vehicle travel on open areas that are currently available to motorized cross-country travel. It will amend forest plan and resource management plan OHV area designations to preserve future options for site-specific travel planning. This would provide timely interim direction that would prevent further resource damage, user conflicts, and related problems, including new user-created roads, associated with motorized cross-country travel until subsequent site-specific travel planning is complete. Site-specific travel planning, or activity planning, will address OHV use on specific roads and trails. This amendment would not change the current limited/restricted yearlong or closed designations, or designated intensive off-road vehicle use areas.

About 16 million acres of public land are currently available to motorized cross-country travel in the analysis area, either yearlong or seasonally, which has the potential to: spread noxious weeds, cause erosion, damage cultural sites, create user conflicts, and disrupt wildlife and damage wildlife habitat.

Problems do not occur equally throughout the analysis area. Motorized cross-country travel is generally limited by current technology to areas that are less steep and have more open vegetative communities. Random use in open areas has created trail networks throughout the analysis area. Some of this use has occurred in riparian areas and on highly erodible slopes.

Monitoring of OHV travel at FS and BLM offices indicates that problems exist where unrestricted motorized cross-country travel is allowed. Many units have completed or begun site-specific travel planning. Most notable efforts are the Elkhorn Mountains near Helena, Montana, and the Whitetail-Pipestone area near Butte, Montana.

Members of the public and the Montana Department of Fish, Wildlife and Parks Commission have shared their concerns about unrestricted OHV travel on public lands. The four BLM Resource Advisory Councils (citizen groups that represent a balance of commodity, conservation, and other public interests) in Montana, North Dakota, and portions of South Dakota, expressed serious concerns about allowing continued, unrestricted, motorized cross-country travel on public lands.

The BLM and FS are concerned that continuing unrestricted use could potentially increase these problems. Areas that are open yearlong or seasonally to motorized cross-country travel in current forest plans and resource management plans will require a plan amendment to address these issues. This proposal to manage the cross-country aspect of motorized vehicle use is part of our responsibility as public land managers to balance human use with the need to protect natural resources.

Authority: Sec. 202, Pub. L. 94–579, 90 Stat. 2747 (43 U.S.C. 1712), Sec. 6, Pub. L. 94–588, 90 Stat. 2949 (16 U.S.C. 1604).

Dated: October 15, 1999.

Thomas P. Lonnie,

Acting State Director, Bureau of Land Management.

Dale N. Bosworth,

Regional Forester, U.S. Forest Service.

[FR Doc. 99–27629 Filed 10–21–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–080–1310–00]

Notice of Intent To Prepare an Environmental Impact Statement (EIS) on the Resource Development Group Uinta Basin Natural Gas Project, Uintah County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an EIS on the Resource Development Group Uinta Basin Natural Gas Project, Uinta County, Utah and notice of scoping.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM), Vernal, Utah Field Office, will be writing an EIS on proposed natural gas development in 79,800 acres in the Atchees Wash oil and gas production region. The project is located primarily on BLM administered lands (69,560 acres). The project area also includes 9,080 acres administered by the State of Utah, and 1,160 acres of patented land. Sixty-four wells and 139 miles of primary and secondary roads exist within the project area. The proponent anticipates the drilling of up to 423 additional wells at a rate of 15 to 40 a year, accessed by approximately 126 miles of new roads. Unpainted steel sales-gas gathering lines would be laid on the surface and integrated into the existing gas pipeline gathering and transmission network. New compressor stations would not be required in the project area.

The number of proposed wells has been adjusted by the proponent from 970 wells in the original Environmental Assessment (EA No. UT–080–1997–50) based on further review of the following factors: topography; slopes with a grade of 40 percent or greater; mitigation of potential impacts on critical mule deer winter range; maximizing use of existing roads; drilling of deeper wells to drain larger reservoirs; and avoidance of the 100-year flood plain along Bitter Creek.

Major issues include potential impacts on critical mule deer winter range, recreational and visual resources near the White River Canyon and wilderness values. Alternatives identified at this time include the proposed action and the no action alternatives.

DATES: Public scoping comments will be accepted on or before November 22, 1999. A public scoping open house and information meeting will be held on November 18, 1999 from 4–7 p.m. at the Western Park, 302 East 200 South, Vernal, Utah. If you have any information, data or concerns related to potential impacts of the proposed action including the issues identified above, or have suggestions for additional alternatives, please submit them to the address listed below.

ADDRESSES: Written scoping comments should be sent to: Field Manager, Bureau of Land Management, Vernal Field Office, 170 South 500 East, Vernal, Utah 84078, ATTN: Resource Development Group Uinta Basin Natural Gas Project.

Comments, including names and street addresses of respondents will be available for public review at the BLM Vernal Field Office and will be subject to disclosure under the Freedom of Information Act (FOIA). They may be published as part of the EIS and other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review and disclosure under the FOIA, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Duane De Paepe (435) 781–4403 or e-mail: ddepaepe@ut.blm.gov.

SUPPLEMENTARY INFORMATION: In April, 1997, the Vernal Field Office initiated an EA (UT–080–1997–50) for this proposed project, located in the Book Cliffs Resource Area, Uintah County, Utah. In June, 1998, the EA was made available to the public and governmental agencies for a 30-day review and comment period. Forty-nine comment letters were subsequently received. Based on these comments, the EA was amended and published in final form in February, 1999. A Decision Record (DR)/ Finding of No Significant Impact (FONSI) was signed on January 29, 1999, and was published with the EA and Conditions of Approval.

As a result of this decision, 12 requests for a State Director Review were received. In addition, a request for a stay of the DR/FONSI was received. A stay was issued until April 16, 1999, pending thorough review of the requests received. The stay was subsequently extended until the review could be completed and a decision issued. On May 21, 1999 the DR/FONSI was vacated and the proposal was remanded to the Vernal Field Office for the preparation of an EIS. A proposed action for this EIS was received by the BLM on September 10, 1999.

Sally Wisely,

State Director.

[FR Doc. 99–27630 Filed 10–21–99; 8:45 am]

BILLING CODE 1310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–912–00–0777–XQ]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Utah Resource Advisory Council.

SUMMARY: The Bureau of Land Management's Utah Statewide Resource Advisory Council meeting will be held on November 17–18, 1999, in Salt Lake City, Utah.

The purpose of this meeting is to provide the Council with an overview of the Resource Advisory Council in Utah, its past accomplishments and activities, some Utah specifics, and an overview of BLM programs in general.

The meeting will be held at the Best Western Salt Lake Plaza Hotel, Aspen Rooms 1 and 2, 122 West South Temple. It is scheduled to begin at 9 a.m. on November 17 and conclude at noon on November 18. A public comment period, where members of the public may address the Council, is scheduled for 3:45 p.m. on November 17. All meetings of the BLM's Resource Advisory Council are open to the public.

FOR FURTHER INFORMATION CONTACT: Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, 324 South State Street, Salt Lake City, 84111; phone (801) 539–4195.

Dated: October 15, 1999.

Sally Wisely,

Utah BLM State Director.

[FR Doc. 99–27631 Filed 10–21–99; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–170–1020–DH; Marble Creek, Allotment #6025]

Notice of Intent: To Amend the Bishop Resource Management Plan, Bishop Field Office, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to consider amending the Bishop Resource

Management Plan (RMP) decision relating to season of use on the Marble Creek Allotment (#6025), Mono County, CA.

SUMMARY: The Marble Creek allotment lies on the alluvial fans on the west side and at the foot of the White Mountains, in the ''Tri-Valley'' area of Mono County, north of Bishop. It includes approximately 15,700 acres of public land. The current number of AUMs for the allotment is 845. At this time, there is no proposal to change the number of AUMs. The current season of use is year round. The proposal is to consider eliminating summer grazing. Sustained summer grazing may be inappropriate due to the vegetation, soils and climate of the allotment.

SUPPLEMENTARY INFORMATION: Final determination on the RMP amendment will be made using an environmental analysis following public comments.

Detailed information concerning the RMP amendment is available at the BLM Bishop Field Office, 785 N. Main St. Suite E, Bishop, Ca 93514 or by contacting Mark Gish at (760) 872–4881.

Comments: For a period of 45 days from the initial date of publication of this notice, interested parties may submit valid comments on the Bishop RMP amendment to the BLM Bishop Field Manager, 785 N. Main St. Suite E, Bishop, CA 93514.

Dated: October 15, 1999.

Steve Addington,

Field Manager, Bishop Field Office.

[FR Doc. 99–27593 Filed 10–21–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–170–1610–DH; CACA 41112]

Notice of Intent To Consider Amending the Bishop Resource Management Plan, Bishop Field Office, CA; Notice of R&PP Proposal: Bodie State Park, Mono County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to consider amending the Bishop Resource Management Plan's list of public land disposal parcels, adding 364± acres; and a Notice of Proposed Disposal under the Recreation and Public Purposes Act (R&PP) for the said 364 acres to the Bodie State Park in Mono County, CA.

SUMMARY: The town of Bodie is arguably the largest and best preserved ghost town in the western US. In 1962, the California State Parks acquired 500 acres of the town to create the Bodie State Park. The historic Bodie Mining District (including the town and surrounding areas) has been a National Historic Landmark since 1964 and lies at the center of the BLM's Bodie Bowl Area of Environmental Concern (ACEC).

Mineral exploration on BLM and private lands within the Bodie Bowl resumed in the 1980's. With passage of the Bodie Protection Act in 1994 and acquisition of over 500 acres of private lands by the Park, the ACEC was essentially closed to mineral development. Due to the history of cultural and industrial development within the Bodie Bowl ACEC, properties acquired by the Park do not form a cohesive whole. There are three outlying Park properties that are not connected to the main Park unit at all. There is a major wedge of federal land separating the newly acquired Park property from the main unit. There are also an unknown number of ''slivers'' of federal property scattered throughout the southern and eastern portion of the Park which were due to the nonconforming independent surveys submitted at the time of the mineral patent transfers from the public domain or which were bits of public domain that were never subject to patent. State Parks believes that management efforts and implementation of necessary limited improvements and safety measures could be streamlined if ownership patterns were adjusted and clarified through this proposed first phase of a Bodie property consolidation.

The proposed R&PP involves the following lands located within the Bodie Bowl Area of Environmental Concern and adjacent to Bodie State Park in the County of Mono, California:

Selected Federal Lands, to be Patented to Bodie State Park:

Mount Diablo Meridian, California,

T. 4 N., R. 26 E.

A. All federal lands within the current boundary of Bodie SHP.

B. Section 9 All federal land in SE¼NW¼, E½SW¼, W½NE¼, SW¼SE¼, E½SE¼SE¼, and south of the Bodie Aurora Road in S½NE¼NW¼ and N½NE¼, totaling about 208.5 ac (±).

C. Section 16 All federal land in NW¼, WN¼NE¼, W½SW¼, and NE¼SW¼, totaling about 89.6 ac (±).

D. Section 17 All federal land in SE¼SE¼, totaling about .023 ac (±).

E. Section 20 All federal land east of the Cottonwood Canyon Road in E½NE¼ and NE¼SE¼, totaling about 38.7 ac (±).

F. Section 21 All federal land in W½NW¼ and north of the cottonwood Canyon Road in NW¼SW¼, totaling about 27 ac (±).

Acreages are approximate due to the possibility of other unmapped federal lands within the boundaries of the existing State Historic Park and uncertain exterior boundaries.

SUPPLEMENTARY INFORMATION: Final determination on the R&PP proposal and the RMP amendment will be made using an environmental analysis following public comments. Public land within any Wilderness Study Area would not be involved in this proposal.

Upon publication of this Notice in the **Federal Register**, the public lands described above are segregated from all forms of appropriation under the public land laws, including the mining laws for a period of 270 days from the date of publication. The segregative effect shall terminate as provided by 43 CFR 2711.1–2(d).

Detailed information concerning the RMP amendment and the proposed R&PP disposal is available at the BLM Bishop Field Office, 785 N. Main St. Suite E, Bishop, CA 93514 or by contacting Larry Primosch or Douglas Dodge at (760) 872–4881.

Comments

For a period of 45 days from the initial date of publication of this notice, interested parties may submit valid comments on the Bishop RMP amendment or the proposed R&PP disposal to the BLM Bishop Field Manager, 785 N. Main St. Suite E, Bishop, CA 93514. A public meeting will be held on Monday, November 8 at 6 pm in the town of Bridgeport to gather comments and help define the issues which must be addressed in the environmental analysis.

Dated: October 15, 1999.

Steve Addington,

Field Manager, Bishop Field Office.

[FR Doc. 99–27592 Filed 10–21–99; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act, Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 28, 1999 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. TA–201–70 (Injury Phase) (Circular Welded Carbon Quality Line

Pipe)—briefing and vote. (The Commission will transmit its recommendations to the President on December 17, 1999).

5. Inv. No. 731–TA–432 (Review) (Drafting Machines from Japan)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on November 8, 1999).

6. Outstanding action jackets: (1) Document No. EC–99–017: Approval of final report in Inv. No. 332–362 (Fifth Annual Report on U.S.-African Trade Flows and Effects of the Uruguay Round Agreements and U.S. Trade and Development Policy).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: October 19, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–27763 Filed 10–20–99; 2:04 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Attorney General

[Attorney General Order No. 2266–99]

Certification of the Attorney General; Tensas Parish, LA

In accordance with Section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments of the Constitution of the United States in Tensas Parish, Louisiana. This parish is included within the scope of the determinations of the Attorney General and the Director of the Census made on August 6, 1965, under Section 4(b) of the Voting Rights Act of 1965 and published in the **Federal Register** on August 7, 1965 (30 FR 9897).

Dated: October 15, 1999.

Janet Reno,

Attorney General of the United States.

[FR Doc. 99–27645 Filed 10–21–99; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Bureau of Prisons

Notice of Availability and Publication of the Supplemental Final Environmental Impact Statement (SFEIS)

AGENCY: Federal Bureau of Prisons, Justice.

ACTION: Notice of Availability of the Supplemental Final Environmental Impact Statement.

SUMMARY:

Proposed Action

The Federal Bureau of Prisons (Bureau) announces the publication of a SFEIS regarding the proposed medium-security federal correctional institution and adjacent minimum-security federal prison camp at the federal correctional complex in Yazoo County, Mississippi.

The document is being made available to provide for timely public comment and understanding of federal plans and programs with possible environmental consequences as required by the National Environmental Policy Act of 1969, as amended.

The purpose of the document is to afford the public and local officials an opportunity to learn of the Bureau's proposed planning, construction and operation of a federal correctional institution and adjacent minimum-security federal prison camp at the federal correctional complex in Yazoo County, Mississippi. The document is available at local libraries or a copy of the SFEIS can be obtained by contacting the Bureau.

Interested persons are encouraged to express their views and comments on the SFEIS by submitting written comments to the Bureau.

Items addressed in the SFEIS include, but are not limited to: utilities, traffic, noise, cultural resources and socio-economic impacts.

Written statements will be accepted until November 22, 1999.

Written comments may be directed to: David J. Dorworth, Chief, Site Selection and Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, Telephone (202) 514–6470, Telefacsimile (202) 616–6024, siteselection@bop.gov.

Dated: October 5, 1999.

David J. Dorworth,

Chief, Site Selection and Environmental Review Branch.

[FR Doc. 99–26387 Filed 10–21–99; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 18, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ((202) 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Officer of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Welfare to Work (WtW) Formula/cumulative Quarterly Status Reports.

OMB: Number: 1205–0385.

Frequency: Quarterly.

Affected Public: Business or other for-profit; not-for-profit institutions; State, Local, or Tribal.

DOL, ETA REPORTING BURDEN FOR WTW COMPETITIVE GRANTS (ETA 9068)

Requirements	1st year	2nd year	3rd year	4th year
Number of Reports Per Entity Per Quarter	1	1	2	2
Total Number of Reports Per Entity Per Year	3	4	8	8
Number of Hours Required for Recording/Reporting Per Quarter Per Report (in minutes)	40	80	120	80
Total Number of Hours Required for Recording/Reporting Hours Per Entity Per Year	2	5	8	5
Number of Entities Reporting	55	55	55	55
Total Number of Hours Required for Recording/Reporting Burden Per Year	110	293	440	293
Total Burden Cost @$10.50 per hour	$1,155.00	$3,080.00	$4,620.00	$3,080.00

Note: Formula Grants will only be issued in years 1 and 2: Grantees may be eligible for a Bonus grant in year 3.
All grant funds will be tracked in the same automated format.
In year 1, formula grants will not be allotted until the 2nd qtr.

DOL, ETA REPORTING BURDEN FOR WTW COMPETITIVE GRANTS (ETA 9068–1)

Requirements	1st year	2nd year	3rd year	4th year
Number of Reports Per Entity Per Quarter	1	1	2	2
Total Number of Reports Per Entity Per Year	3	4	4	4
Number of Hours Required for Recording/Reporting Per Quarter Per Report (in minutes)	40	80	120	80
Total Number of Hours Required for Recording/Reporting Hours Per Entity Per Year	2	5	8	5
Number of Entities Reporting	200	200	200	200
Total Number of Hours Required for Recording/Reporting Burden Per Year	400	1,067	1,600	1,067
Total Burden Cost @$10.50 per hour	$4,200.00	$11,200.00	$16,800.00	$11,200.00

Note: Competitive Grants to be awarded in years 1 and 2. Estimate 200 grants will be awarded to eligible applicants.
All grant funds will be tracked in the same automated format.
In year 1, competitive grants will not be let until the 2nd quarter.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The information will provide a means for the Secretary of Labor to manage and evaluate the WtW program as well as develop a formula for measuring State performance to be utilized in determining and awarding bonuses to States. These performances are authorized under the Act in Section 403(a)(5)(E).

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–27651 Filed 10–21–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Native American Employment and Training Council

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and section 401(k)(1) of the Job Training Partnership Act, as amended [29 U.S.C. 1671(k)(1)], notice is hereby given of a meeting of the Native American Employment and Training Council.

Time and Date: The meeting will begin at 8 a.m. EST on Thursday, November 18, 1999, and continue until 5 p.m. EST that day. The meeting will reconvene at 8 a.m. EST on Friday, November 19, 1999, and adjourn at 5 p.m. EST on that day. The period from 10 a.m. to 12 n. EST on November 18 will be reserved for participation and presentation by members of the public.

Place: The Meeting Room of the Orange County Public Library, 4600 South Orange Blossom Trail, Orlando, Florida 32839.

Status: The meeting will be open to the public.

Matters to be Considered: The agenda will focus on the following topics: (1) Renewal of the Council charter; (2) work group progress reports; (3) current status of WIA implementation efforts; (4) status of the WIA Final Regulations effort; (5) status of technical assistance and training provision for Program Years 1999 and 2000; and (6) WIA performance measures, reporting, and planning guidance.

FOR FURTHER INFORMATION CONTACT: Mr. James C. DeLuca, Chief, Division of Indian and Native American Programs, Office of National Programs, Employment and Training Administration, U.S. Department of Labor, Room N–4641, 200 Constitution Avenue, NW, Washington, DC 20210.

Telephone: (202) 219–8502 ext 119(VOICE) or (202) 326–2577(TDD) (these are not toll-free numbers).

Signed at Washington, DC, this day of October, 1999.

Anna W. Goddard,

Director, Office of National Programs.

[FR Doc. 99–27648 Filed 10–21–99; 8:45 am]

BILLING CODE: 4510–30–U

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931,

as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may, from time to time, be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently, and in large volume, causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, the following General Wage Determinations:

VA990075—See VA990056
VA990076—See VA990056

Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c) (i) (A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

New General Wage Determination Decision

The number of the decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' are listed by Volume and States:

Volume I

New York
NY990079 (Oct. 22, 1999)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York
NY990023 (Mar. 12, 1999)
NY990027 (Mar. 12, 1999)
NY990028 (Mar. 12, 1999)
Rhode Island
RI990001 (Mar. 12, 1999)
RI990002 (Mar. 12, 1999)

Volume II

Delaware
DE990001 (Mar. 12, 1999)
DE990002 (Mar. 12, 1999)
DE990004 (Mar. 12, 1999)
DE990005 (Mar. 12, 1999)
DE990008 (Mar. 12, 1999)
DE990009 (Mar. 12, 1999)
Maryland
MD990004 (Mar. 12, 1999)
MD990019 (Mar. 12, 1999)
Virginia
VA990056 (Mar. 12, 1999)
VA990065 (Mar. 12, 1999)
VA990077 (Mar. 12, 1999)
VA990093 (Mar. 12, 1999)
VA990094 (Mar. 12, 1999)

Volume III

Florida
FL990001 (Mar. 12, 1999)
FL990009 (Mar. 12, 1999)
FL990017 (Mar. 12, 1999)

Volume IV

Michigan
MI990007 (Mar. 12, 1999)
MI990012 (Mar. 12, 1999)
MI990030 (Mar. 12, 1999)
MI990034 (Mar. 12, 1999)
MI990062 (Mar. 12, 1999)
MI990066 (Mar. 12, 1999)
MI990067 (Mar. 12, 1999)
MI990068 (Mar. 12, 1999)
MI990069 (Mar. 12, 1999)
MI990070 (Mar. 12, 1999)
MI990071 (Mar. 12, 1999)
MI990072 (Mar. 12, 1999)
MI990073 (Mar. 12, 1999)
MI990074 (Mar. 12, 1999)
MI990075 (Mar. 12, 1999)
MI990076 (Mar. 12, 1999)
MI990077 (Mar. 12, 1999)
MI990078 (Mar. 12, 1999)
MI990079 (Mar. 12, 1999)
MI990080 (Mar. 12, 1999)
MI990081 (Mar. 12, 1999)
MI990082 (Mar. 12, 1999)
MI990083 (Mar. 12, 1999)
MI990084 (Mar. 12, 1999)
MI990085 (Mar. 12, 1999)
MI990086 (Mar. 12, 1999)
MI990087 (Mar. 12, 1999)
MI990088 (Mar. 12, 1999)
Wisconsin
WI990008 (Mar. 12, 1999)
WI990010 (Mar. 12, 1999)
WI990019 (Mar. 12, 1999)

Volume V

Iowa
IA990038 (Mar. 12, 1999)
IA990047 (Mar. 12, 1999)
Kansas
KS990006 (Mar. 12, 1999)
KS990016 (Mar. 12, 1999)
KS990069 (Mar. 12, 1999)
KS990070 (Mar. 12, 1999)
Texas
TX990005 (Mar. 12, 1999)
TX990010 (Mar. 12, 1999)

Volume VI

Idaho
ID990001 (Mar. 12, 1999)
ID990004 (Mar. 12, 1999)
ID990005 (Mar. 12, 1999)
ID990013 (Mar. 12, 1999)
ID990014 (Mar. 12, 1999)
Montana
MT990001 (Mar. 12, 1999)
MT990003 (Mar. 12, 1999)
MT990004 (Mar. 12, 1999)
MT990007 (Mar. 12, 1999)
MT990033 (Mar. 12, 1999)
MT990035 (Mar. 12, 1999)
Oregon
OR990001 (Mar. 12, 1999)
OR990017 (Mar. 12, 1999)]
Washington

WA990001 (Mar. 12, 1999)
WA990002 (Mar. 12, 1999)
WA990003 (Mar. 12, 1999)
WA990005 (Mar. 12, 1999)
WA990006 (Mar. 12, 1999)
WA990008 (Mar. 12, 1999)
WA990010 (Mar. 12, 1999)

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 14th day of October 1999.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–27355 Filed 10–21–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0205(2000)]

Personal Protective Equipment for General Industry, Extension of the Office of Management and Budget's (OMB) Approval of an Information Collection (Paperwork) Request

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the proposed extension of the information collection requirements contained in the standard on Personal Protective Equipment for General Industry (PPE), 29 CFR 1910.132 (d)(2) and (f)(4).

Request for Comment

The Agency seeks comments on the following issues:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated, electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Submit written comments on or before December 21, 1999.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0205(2000), Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2222. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements contained in the standard on Personal Protective Equipment for General Industry (29 CFR 1910.132) is available for inspection and copying in the Docket Office, or mailed on request by telephoning Theda Kenney at (202) 693–2222 or Barbara Bielaski at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at http://www.osha.gov/comp-links.html, and click on ''Information Collection Requests.''

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct.

The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents. (29 U.S.C. 657.) Paragraph 1910.132(d) of the PPE standard requires employers to perform a hazard assessment of the workplace to determine if personal protective equipment is necessary. The hazard assessment is an important part of the process to assure that the PPE selected is appropriate for the hazards present in the workplace. Paragraph (d)(2) requires employers to certify that they performed a hazard assessment. The signed certification must include the date of the hazard assessment and the identification of the workplace evaluated (area or location).

Paragraph (f)(4) of 1910.132 requires employers to certify that employees received and understood PPE training. The training certification must include the name of the employee(s) trained, the date of training, and the subject of the certification (*i.e.*, a statement identifying the document as a certification of training in the use of PPE).

The hazard assessment assures that the PPE selected is appropriate for the hazards present in the workplace. The certification record required with the

hazard assessment verifies that the employer conducted the hazard assessment. The training certification verifies that employees received the necessary training involving the use of PPE. OSHA compliance officers may require employers to disclose the certification records during an Agency inspection.

II. Proposed Actions

OSHA estimates that employers will expand 608,871 hours yearly to comply with the information collection requirements in the PPE Standard (29 CFR 1910.132). This is an increase of 151,656 burden hours over the previous estimate of 457,215 burden hours.

OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the above standard.

Type of Review: Extension of a currently approved information collection requirement.

Agency: Occupational Safety and Health Administration.

Title: Personal Protective Equipment for General Industry (29 CFR 1910.132).

OMB Number: 1218–0205.

Affected Public: Business or other for-profit, not-for-profit institutions; Federal government; state, local or tribal government.

Number of Respondents: 2,340,000.

Frequency: Varies (on occasion, annually).

Average Time per Response: Varies from five minutes (0.08 hour) to 29 hours.

Estimated Total Burden Hours: 608,871.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labors Order No. 6–96 (62 FR 111).

Signed at Washington, DC, this 15th day of October 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–27649 Filed 10–21–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Permit-Required Confined Spaces for General Industry; Agency Information Collection Activities; Announcement of Office of Management and Budget's (OMB) Approval of Information Collection Requirements

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice; Announcement of OMB approval of information collection requirement.

SUMMARY: The Occupational Safety and Health Administration is announcing that OMB approved the collections of information found in the standard on Permit-Required Confined Spaces for General Industry (29 CFR 1910.146) under the Paperwork Reduction Act of 1995 (PRA–95). This document announces the OMB approval number and expiration date.

DATES: October 22, 1999.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2222.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 16, 1999 (64 FR 18938), the Agency announced its intent to request approval from OMB for information collection requirements contained in the standard on Permit-Required Confined Spaces for General Industry (29 CFR 1910.146). OSHA made this request in response to 5 CFR 1320.5(b), which states that the Agency may not conduct or sponsor, and a person is not required to comply with, a collection of information requirement unless OMB approves the information collection requirement and assigns a control number to the approved requirement. In accordance with PRA–95 (44 U.S.C. 3501–3520), OMB approved the information collection requirements and assigned OMB control number 1228–0203 to the approved requirements. The approval expires on August 31, 2002.

Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 6–96 (62 FR 111).

Signed at Washington, DC, this 15th day of October 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–27650 Filed 10–21–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Maritime Advisory Committee for Occupational Safety and Health; Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Maritime Advisory Committee for Occupational Safety and Health; Notice of meeting.

SUMMARY: The Maritime Advisory Committee for Occupational Safety and Health (MACOSH), established under Section 7 of the Occupational Safety and Health Act of 1970 to advise the Secretary of Labor on issues relating to occupational safety and health programs, policies, and standards in the maritime industries in the United States, will meet in Annapolis, Maryland.

DATES: The Committee will meet:

—On November 17, 1999, from 9 A.M. until approximately 5 P.M;. and

—On November 18, 1999, from 8:30 A.M. until approximately 5 P.M.

ADDRESSES: The Committee will meet at the Annapolis Marriott Waterfront Hotel, 80 Compromise Street, Annapolis, Maryland 21401; telephone (410) 268–7555. Mail comments, views, or statements in response to this notice to Chap Pierce, Director of Fire Protection Engineering and Systems Safety Standards, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW, Washington, DC 20210. Phone: (202) 693–2255; fax: (202) 693–1663.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Public Affairs, OSHA; Phone (202) 693–1999.

SUPPLEMENTARY INFORMATION: All interested persons are invited to attend the public meetings of MACOSH at the time and place indicated above. Individuals with disabilities wishing to attend should contact Theda Kenney at (202) 693–2222 no later than November 10, 1999, to obtain appropriate accommodations.

Meeting Agenda

This meeting will include discussion of the following subjects: OSHA

Strategic Plan initiatives; vertical tandem lifts in the marine cargo handling environment; ship scrapping; training partnerships; an update on ergonomics projects; a general OSHA standards update; and an OSHA compliance update. MACOSH subgroups will also present overviews of their activities, products, and future goals/initiatives.

Public Participation

Written data, views, or comments for consideration by MACOSH on the various agenda items listed above may be submitted, preferably with copies, to Chap Pierce at the address listed above. Submissions received by November 5, 1999 will be provided to the members of the committee and will be included in the record of the meeting. Requests to make oral presentations to the Committee may be granted if time permits. Anyone wishing to make an oral presentation to the Committee on any of the agenda items noted above should notify Chap Pierce by November 10, 1999. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

Authority: This notice is issued under the authority of sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), and 29 CFR part 1912.

Signed at Washington, DC this 18th day of October 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–27647 Filed 10–21–99; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10706 et al.]

Proposed Exemptions; Allfirst Bank, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request; and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Allfirst Bank, Located in Baltimore, Maryland

[Application No. D–10706]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990).

Section I—Proposed Exemption for Receipt of Fees

If the exemption is granted, the restrictions of section 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply as of November 13, 1998, to the proposed receipt of fees by Allfirst from the ARK Funds, an open-end investment company registered under the Investment Company Act of 1940 (the 1940 Act), for acting as an investment adviser for such Funds, as well as for providing other services to the ARK Funds which are ''Secondary Services'' as defined in Section III(i), in connection with the investment by plans for which Allfirst serves as a fiduciary (the Client Plans) in shares of the ARK Funds, provided that the following conditions and the general conditions of Section II are met:

(a) Each Client Plan satisfies either (but not both) of the following:

(1) The Client Plan receives a cash credit of such Plan's proportionate share of all fees charged to the Funds by Allfirst for investment advisory services, including any investment advisory fees paid by Allfirst to third party sub-advisers, no later than the same day as the receipt of such fees by Allfirst. The crediting of all such fees to the Client Plans by Allfirst is audited by an independent accounting firm on at least an annual basis to verify the proper crediting of the fees to each Plan.

(2) The Client Plan does not pay any Plan-level investment management fees, investment advisory fees, or similar fees to Allfirst with respect to any of the assets of such Plan which are invested in shares of any of the ARK Funds. This

condition does not preclude the payment of investment advisory or similar fees by the ARK Funds to Allfirst under the terms of an investment management agreement adopted in accordance with section 15 of the 1940 Act, nor does it preclude the payment of fees for Secondary Services to Allfirst pursuant to a duly adopted agreement between Allfirst and the ARK Funds.

(b) The price paid or received by a Client Plan for shares in a Fund is the net asset value per share at the time of the transaction, as defined in Section III(f), and is the same price which would have been paid or received for the shares by any other investor at that time.

(c) Allfirst, including any officer or director of Allfirst, does not purchase or sell shares of the ARK Funds from or to any Client Plan.

(d) No sales commissions are paid by the Client Plans in connection with the purchase or sale of shares of the ARK Funds, and no redemption fees are paid in connection with the sale of shares by the Client Plans to the ARK Funds.

(e) For each Client Plan, the combined total of all fees received by Allfirst for the provision of services to a Client Plan, and in connection with the provision of services to the ARK Funds in which the Client Plan may invest, are not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(f) Allfirst does not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions.

(g) The Client Plans are not employee benefit plans sponsored or maintained by Allfirst.

(h) The Second Fiduciary receives, in advance of any initial investment by the Client Plan in a Fund, full and detailed written disclosure of information concerning the ARK Funds, including but not limited to:

(1) A current prospectus for each Fund in which a Client Plan is considering investing;

(2) A statement describing the fees for investment advisory or similar services, any secondary services as defined in Section III(i), and all other fees to be charged to or paid by the Client Plan and by the ARK Funds, including the nature and extent of any differential between the rates of such fees;

(3) The reasons why Allfirst may consider such investment to be appropriate for the Client Plan;

(4) A statement describing whether there are any limitations applicable to Allfirst with respect to which assets of a Client Plan may be invested in the ARK Funds, and if so, the nature of such limitations; and

(5) Upon request of the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption, if granted, once such documents are published in the **Federal Register**.

(i) After consideration of the information described above in paragraph (h), the Second Fiduciary authorizes in writing the investment of assets of the Client Plan in each particular Fund and the fees to be paid by such ARK Funds to Allfirst.

(j) All authorizations made by a Second Fiduciary regarding investments in a Fund and the fees paid to Allfirst are subject to an annual reauthorization wherein any such prior authorization referred to in paragraph (i) shall be terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by Allfirst of written notice of termination. A form expressly providing an election to terminate the authorization described in paragraph (i) above (the Termination Form) with instructions on the use of the form must be supplied to the Second Fiduciary no less than annually—provided that the Termination Form need not be supplied to the Second Fiduciary pursuant to this paragraph sooner than six months after such Termination Form is supplied pursuant to paragraph (l) below, except to the extent required by such paragraph in order to disclose an additional service or fee increase. The instructions for the Termination Form must include the following information:

(1) The authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by Allfirst of written notice from the Second Fiduciary; and

(2) Failure to return the Termination Form will result in continued authorization of Allfirst to engage in the transactions described in paragraph (i) on behalf of the Client Plan.

(k) For each Client Plan using the fee structure described in paragraph (a)(1) above with respect to investments in a particular Fund, the Second Fiduciary of the Client Plan receives full written disclosure in a Fund prospectus or otherwise of any increases in the rates of fees charged by Allfirst to the ARK Funds for investment advisory services.

(l)(1) For each Client Plan using the fee structure described in paragraph (a)(2) above with respect to investments in a particular Fund, an increase in the rate of fees paid by the Fund to Allfirst regarding any investment management services, investment advisory services, or similar services that Allfirst provides to the Fund over an existing rate for such services that had been authorized by a Second Fiduciary in accordance with paragraph (i) above; or

(2) For any Client Plan under this proposed exemption, an addition of a Secondary Service (as defined in Section III(i) below) provided by Allfirst to the Fund for which a fee is charged, or an increase in the rate of any fee paid by the ARK Funds to Allfirst for any Secondary Service that results either from an increase in the rate of such fee or from the decrease in the number of kind of services performed by Allfirst for such fee over an existing rate for such Secondary Service which had been authorized by the Second Fiduciary of a Client Plan in accordance with paragraph (i) above;

Allfirst will, at least 30 days in advance of the implementation of such additional service for which a fee is charged or fee increase, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Fund and that explains the nature and amount of the additional service for which a fee is charged or of the increase in fees) to the Second Fiduciary of the Client Plan. Such notice shall be accompanied by a Termination Form with instructions as described in paragraph (i) above.

(m) On an annual basis, Allfirst provides the Second Fiduciary of a Client Plan investing in the ARK Funds with:

(1) A copy of the current prospectus for the ARK Funds in which the Client Plan invests and, upon such fiduciary's request, a copy of the Statement of Additional Information for such ARK Funds which contains a description of all fees paid by the ARK Funds to Allfirst;

(2) A copy of the annual financial disclosure report prepared by Allfirst which includes information about the Fund portfolios as well as audit findings of an independent auditor within 60 days of the preparation of the report; and

(3) Oral or written responses to inquiries of the Second Fiduciary as they arise.

(n) With respect to each of the ARK Funds in which a Client Plan invests, in the event such Fund places brokerage transactions with Allfirst, Allfirst will provide the Second Fiduciary of such Plan at least annually with a statement specifying:

(1) The total, expressed in dollars, of brokerage commissions of each Fund that are paid to Allfirst by such Fund;

(2) The total, expressed in dollars, of brokerage commissions of each Fund

that are paid by such Fund to brokerage firms unrelated to Allfirst;

(3) The average brokerage commissions per share, expressed as cents per share, paid to Allfirst by each Fund; and

(4) The average brokerage commissions per share, expressed as cents per share, paid by each Fund to brokerage firms unrelated to Allfirst.

(o) All dealings between the Client Plans and the ARK Funds are on a basis no less favorable to the Plans than dealings with other shareholders of the ARK Funds.

Section II—General Conditions

(a) Allfirst maintains for a period of six years the records necessary to enable the persons described below in paragraph (b) to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Allfirst, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than Allfirst shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided below in paragraph (b)(2) and notwithstanding any provisions of section 504(a)(2) of the Act, the records referred to in paragraph (a) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of the Client Plans who has authority to acquire or dispose of shares of the ARK Funds owned by the Client Plans, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of the Client Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (b)(1)(ii) and (iii) shall be authorized to examine trade secrets of Allfirst, or commercial or financial information which is privileged or confidential.

Section III—Definitions

For purposes of this proposed exemption:

(a) The term ''Allfirst'' means Allfirst Bank, and any affiliate thereof as defined below in paragraph (c)(1) of this section, effective as of June 28, 1999, the date the First National Bank of Maryland (First Maryland) changed its name to Allfirst Bank.

(b) The term ''First Maryland'' refers to First National Bank of Maryland, and any affiliate thereof as defined below in paragraph (c)(1) of this section, prior to June 28, 1999.

(c) An ''affiliate'' of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(d) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) The term ''Fund'' or ''ARK Funds'' shall include the ARK Funds, Inc. or any other diversified open-end investment company or companies registered under the 1940 Act for which Allfirst serves as an investment adviser and may also serve as a custodian, dividend disbursing agent, shareholder servicing agent, transfer agent, Fund accountant, or provide some other ''Secondary Service'' (as defined below in paragraph (i) of this Section) which has been approved by such ARK Funds.

(f) The term ''net asset value'' means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Fund's prospectus and Statement of Additional Information, and other assets belonging to the Fund or portfolio of the Fund, less the liabilities charged to each such portfolio or Fund, by the number of outstanding shares.

(g) The term ''relative'' means a ''relative'' as that term is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(h) The term ''Second Fiduciary'' means a fiduciary of a Client Plan who is independent of and unrelated to Allfirst. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to Allfirst if:

(1) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with Allfirst;

(2) Such fiduciary, or any officer, director, partner, employee, or relative of the fiduciary is an officer, director, partner or employee of Allfirst (or is a relative of such persons);

(3) Such fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this proposed exemption.

If an officer, director, partner or employee of Allfirst (or relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the choice of the Client Plan's investment adviser, (ii) the approval of any such purchase or sale between the Client Plan and the ARK Funds, and (iii) the approval of any change in fees charged to or paid by the Client Plan in connection with any of the transactions described in Section I above, then paragraph (h)(2) of this section shall not apply.

(i) The term ''Secondary Service'' means a service other than an investment management, investment advisory, or similar service, which is provided by Allfirst to the ARK Funds, including but not limited to custodial, accounting, brokerage, administrative, or any other service.

(j) The term ''Termination Form'' means the form supplied to the Second Fiduciary which expressly provides an election to the Second Fiduciary to terminate on behalf of a Client Plan the authorization described in paragraph (i) of Section I. Such Termination Form may be used at will by the Second Fiduciary to terminate an authorization without penalty to the Client Plan and to notify Allfirst in writing to effect a termination by selling the shares of the ARK Funds held by the Client Plan requesting such termination within one business day following receipt by Allfirst of the form; provided that if, due to circumstances beyond the control of Allfirst, the sale cannot be executed within one business day, Allfirst shall have one additional business day to complete such sale.

EFFECTIVE DATE: The proposed exemption, if granted, will be effective as of November 13, 1998, the date that Dauphin Deposit Bank and Trust Company ceased to exist as a separate bank as a result of its acquisition by First Maryland.

Summary of Facts and Representations

1. Allfirst is currently a subsidiary of First Maryland Bancorp, a Maryland corporation and bank holding company registered under the Bank Holding Company Act of 1956. Prior to June 28, 1999, Allfirst was doing business under the name ''First National Bank of Maryland'' (*i.e.*, First Maryland). The

applicant represents that First Maryland changed its name to ''Allfirst Bank'' effective June 28, 1999. The applicant states that as of September 21, 1999, there have been no further name changes. Thus, all representations made by Allfirst are meant to apply to First Maryland for the period from November 13, 1998, the effective date of this proposed exemption, until June 28, 1999.

First Maryland Bancorp serves, through its banking, trust company and investment management affiliates, as trustee, investment manager and/or custodian to employee benefit plans. As of December 31, 1997, these affiliates collectively provided trust services to approximately 800 employee benefit trusts, and had total assets under management of approximately $16 billion. As of that date, First Maryland Bancorp had consolidated total assets of $17.8 billion.

Prior to November 13, 1998, First Maryland Bancorp wholly-owned the following banks and trust companies: (i) The York Bank & Trust Company (a Pennsylvania-chartered bank, referred to hereafter as York Bank); (ii) First Omni Bank, N.A. (a national banking association); (iii) First National Bank of Maryland (a national banking association); (iv) Dauphin Deposit Bank & Trust Company (a Pennsylvania-chartered bank, acquired July 8, 1997, referred to hereafter as ''Dauphin''); and (v) FMB Trust Company, N.A. (a non-depository trust company wholly-owned by First Maryland).

Effective November 13, 1998, Dauphin and York Bank were merged into First Maryland. Following this merger, the trust and investment advisory business formerly conducted by Dauphin was conducted by First Maryland and its trust and investment advisory subsidiaries.

First Maryland (*i.e.*, Allfirst, as of June 28, 1999) also owns First Maryland Brokerage Corp., a brokerage firm, and Allied Investment Advisors, Inc. (Allied), a registered investment adviser that serves as investment adviser to the ARK Funds. As of June 30, 1998, Allied had assets under management of approximately $11.1 billion.

First Maryland Bancorp is controlled by Allied Irish Banks, p.l.c., which owns 100% of First Maryland Bancorp's outstanding common stock.

2. In 1996, Dauphin obtained a prohibited transaction exemption from the Department (see Prohibited Transaction Exemption (PTE) 96–45 (61 FR 28244, June 4, 1996). Section I of PTE 96–45 permits the in-kind transfer of assets of plans for which Dauphin acted as a fiduciary (the Client Plans), other than plans established and maintained by Dauphin (Bank Plans), that were held in certain collective investment funds (CIFs) maintained by Dauphin, in exchange for shares of the Marketvest Funds, open-end investment companies registered under the 1940 Act, in situations where Dauphin acted as investment advisor for such Funds, as well as for providing certain ''secondary services'' to such Funds (as defined therein), in connection with the termination of such CIFs. Section II of PTE 96–45 permits the receipt of fees by Dauphin from the Marketvest Funds, or any other diversified open-end investment company registered under the 1940 Act for which Dauphin serves as an investment adviser, for acting as an investment adviser for such Funds as well as for providing other services to the Funds which are ''secondary services'' (as defined therein), in connection with the investment by the Client Plans in shares of such Funds.

In July 1997, Dauphin became a subsidiary of First Maryland, and in March 1998, the Marketvest Funds were merged into First Maryland's family of mutual funds. Dauphin ceased to exist as a separate bank as of November 13, 1998. Therefore, First Maryland requested a new exemption to enable it to obtain exemptive relief similar to the relief granted by the Department to Dauphin in Section II of PTE 96–45 for the receipt of fees by Dauphin from the Marketvest Funds. With respect to the relief provided to Dauphin in Section I of PTE 96–45, it should be noted that the Department granted a class exemption in August 1997 for collective investment fund conversion transactions (see PTE 97–41, 62 FR 42830, August 8, 1997). Thus, the relief provided to Dauphin in PTE 96–45, Section I, for in-kind transfers of CIF assets to Funds, would be available under PTE 97–41 to First Maryland as of November 13, 1998, and is available to Allfirst as of June 28, 1999, if the conditions of that class exemption are met.

However, First Maryland (*i.e.*, Allfirst), like Dauphin and as the acquirer of Dauphin's business, serves a number of employee benefit plan clients in the capacity of trustee, investment manager, and/or custodian. The assets of some of these plans are investment in the ARK Funds, a series of mutual fund portfolios advised by an affiliate of Allfirst, as discussed further below. As a result, this proposed exemption concerns the relief needed by First Maryland, as of November 13, 1998, and Allfirst, as of June 28, 1999, for the receipt of fees by such entities from the ARK Funds for investment advisory and other services to such Funds.

3. As noted above, Allfirst acts as a trustee, directed trustee, investment manager, and/or custodian for a number of plans (referred to herein as ''the Client Plans''). The Client Plans may include various pension, profit sharing, and stock bonus plans, as well as voluntary employees' beneficiary associations, supplemental unemployment benefit plans, simplified employee benefit plans, retirement plans for self-employed individuals (*i.e.* Keogh Plans) and individual retirement accounts (IRAs). Some of the Client Plans may be participant-directed individual account plans.

As custodian of a Client Plan, Allfirst is responsible for maintaining custody over all or a portion of the Client Plan's assets, for providing trust accounting and valuation services, for asset and transaction reporting, and for execution and settlement of directed transactions. Where Allfirst serves as trustee or directed trustee, it is responsible for ownership of the assets of the Client Plan, and may provide additional trust services such as benefit payments, loan processing, and participant accounting. Where Allfirst is also acting as the investment manager, Allfirst has investment discretion over the Client Plan's assets and is responsible for implementing the Plan's funding policies and investment objectives, executing transactions, and periodic performance measurements.

The Client Plans pay fees in accordance with fee schedules negotiated with Allfirst. Fees vary from fixed amounts to asset-based amounts, depending on the level of services provided, and may include further charges for additional trust services such as processing benefit payments.

The specific Client Plans of Allfirst to which this proposed exemption, if granted, would apply are those whose assets were invested in the ARK Funds as of November 13, 1998, those whose assets have been invested in such Funds since that date, and those whose assets will be invested in such Funds in the future. However, Allfirst does not seek relief for investments in the Funds by any employee benefit plans established and maintained by Allfirst for its own employees (Allfirst Plans).[1]

[1] Allfirst represents that it will comply with the requirements of Prohibited Transaction Exemption (PTE) 77–3, 42 FR 18734 (April 8, 1977), with respect to any investments in the Funds made by the Allfirst Plans. PTE 77–3 permits the acquisition or sale of shares of a registered, open-end investment company by an employee benefit plan covering only employees of such investment company, employees of the investment adviser or

4. The ARK Funds are registered as an open-end investment company with the SEC under the 1940 Act. The ARK Funds consist of a series of investment portfolios (each a ''Fund'') representing distinct investment vehicles. Each ARK Fund will have its own prospectus or a joint prospectus with one or more other ARK Fund(s). The shares of each ARK Fund will represent a proportionate interest in the assets of that Fund.

The overall management of the ARK Funds, including the negotiation of investment advisory contracts, will rest with each Fund's Board of Directors, more than a majority of whose members will be independent of Allfirst. The Board of Directors will be elected by the shareholders of the Funds. Allied, which is a wholly-owned subsidiary of Allfirst, serves as the investment adviser to each ARK Fund and will receive investment advisory fees from each Fund that will vary between 0.20% and 1.00% of the Fund's average net assets on an annual basis, depending on the particular Fund. However, these fees will be subject to voluntary waivers by Allfirst and initially will be no more than 0.87% of the Fund's average net assets. FMB Trust Company, another First Maryland subsidiary, serves as custodian of the ARK Funds, for which it receives a custodial services fee and also provides sub-administration services for a fee.

The other service-providers to the Funds will be independent of and unaffiliated with Allfirst. Such service-providers currently will include: (i) The Fund Administrator, SEI Investments Mutual Fund Services; (ii) the Fund Distributor, SEI Investments Distribution Co.; and (iii) the Transfer Agent, SEI Investments Management Corporation. The ARK Funds also may pay shareholder servicing fees of up to 0.15% on certain classes of shares.

The Funds will be able to charge a distribution fee of 0.25% of a Fund's average net assets, pursuant to Rule 12b–1 under the 1940 Act, for certain classes of shares. However, Allfirst represents that such 12b–1 fees will not be charged to any class of shares invested in by the Client Plans. Therefore, Allfirst will not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions covered by this proposed exemption.

principal underwriter for such investment company, or employees of any affiliated person (as defined therein) of such investment adviser or principal underwriter, provided certain conditions are met. The Department is expressing no opinion in this proposed exemption regarding whether any of the transactions with the Funds by the Allfirst Plans would be covered by PTE 77–3.

5. Allfirst is making the ARK Funds available to the Client Plans because it believes that there are material advantages to the Client Plans from the use of the ARK Funds, and Allfirst's customers are interested in having mutual funds available as investment vehicles for their employee benefit plan trust accounts. The ARK Funds are valued on a daily basis, which permits: (i) Immediate investment of Plan contributions in varied types of investments; (ii) greater flexibility in transferring assets from one type of investment to another; and (iii) daily redemption of investments for purposes of making distributions. In addition, information concerning the investment performance of the ARK Funds is available each day in newspapers of general circulation, which allow Client Plan sponsors and participants to monitor the performance of their investments on a daily basis. Furthermore, shares of the ARK Funds can be given to Client Plan participants in plan distributions, thus avoiding the expense and delay of liquidating plan investments and facilitating roll-overs into IRAs. At the present time, Allfirst expects that the Client Plans will be able to continue making direct purchases of ARK Fund shares for cash on an ongoing basis.

Allfirst states that the price that will be paid or received by a Client Plan for shares in a Fund will be the net asset value per share at the time of the transaction, as defined in Section III(f), and will be the same price which will be paid or received for the shares by any other investor at that time. In addition, Allfirst states that no sales commissions or redemption fees will be charged in connection with the purchase or sale of Fund shares by the Client Plans.

6. Prior to investing any Client Plan's assets in an ARK Fund, Allfirst will obtain the approval of a Second Fiduciary acting for the Client Plan. The Second Fiduciary generally will be the Client Plan's named fiduciary, trustee (if other than Allfirst), or the sponsoring employer. Allfirst will provide the Second Fiduciary with a current prospectus for the Fund and a written statement giving full disclosure of the fee structure under which either Allfirst's investment advisory and other fees will be credited back to the Client Plan or the Plan-level investment management fees will be waived. The disclosure statement and the letter that precedes the disclosure statement will describe why Allfirst believes the investment of a Client Plan's assets in the ARK Funds may be appropriate. Allfirst states that these disclosures will be based on the requirements of PTE 77–4 (42 FR 18732, April 8, 1977).[2]

On the basis of such information, the Second Fiduciary will authorize Allfirst to invest the Client Plan's assets in the ARK Funds and to receive fees from the ARK Funds.

7. Allfirst will charge investment advisory fees to the ARK Funds in accordance with the investment advisory agreements between Allfirst and the ARK Funds. These agreements will be approved by the independent members of the Board of Directors of the ARK Funds, in accordance with the applicable provisions of the 1940 Act, and any subsequent changes in the fees will have to be approved by such Directors. These fees also will not be increased without the approval of the shareholders of the affected ARK Funds. The fees will be paid monthly by the ARK Funds. In addition, FMB Trust Company, an affiliate of Allfirst, will charge fees for custody services, or other services, it will provide to the ARK Funds in accordance with a custodial services agreement and other agreements negotiated with the ARK Funds.

Allfirst will avoid charging the Client Plans duplicative investment management fees by either: (a) Crediting the Client Plan's pro rata share of the Fund advisory fees back to the Client Plan; or (b) waiving any investment management fee for the Client Plan at the Plan-level.

The ''crediting'' fee structure will be designed to preserve the negotiated fee rates of the Client Plans so as to minimize the impact of the change to the ARK Funds on a Client Plan's fees. Allfirst will charge a Client Plan its standard fees as applicable to the particular Client Plan for serving as trustee, directed trustee, investment manager, or custodian. At the beginning of each month, and in no event later than the same day as the payment of investment advisory fees by the ARK

[2] PTE 77–4, in pertinent part, permits the purchase and sale by an employee benefit plan of shares of a registered, open-end investment company when a fiduciary with respect to the plan is also the investment adviser for the investment company, provided that, among other things, the plan does not pay an investment management, investment advisory, or similar fee with respect to the plan assets invested in such shares for the entire period of such investment. Section II(c) of PTE 77–4 states that this condition does not preclude the payment of investment advisory fees by the investment company under the terms of an investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940. Section II(c) states further that this condition does not preclude payment of an investment advisory fee by the plan based on total plan assets from which a credit has been subtracted representing the plan's pro rata share of investment advisory fees paid by the investment company.

Funds to Allfirst for the previous month, Allfirst will credit to each Client Plan in cash its proportionate share of all investment advisory fees charged by Allfirst to the ARK Funds for the previous month. The credit will include the Client Plan's share of any investment advisory fees paid by Allfirst to third party sub-advisors.

Allfirst states that the credit will not include the custodial fees payable by the ARK Funds to FMB Trust Company, or any other affiliate of Allfirst who may serve in that capacity in the future, because custodial services rendered at the Fund-level will not be duplicative of any services provided directly to the Client Plan. The custodial services to the Fund will involve maintaining custody and providing reporting relative to the individual securities owned by the Fund. The services to the Client Plan will involve maintaining custody over all or a portion of the Client Plan's assets (which may include Fund shares, but not the assets underlying the Fund shares), providing trust accounting and participant accounting (if applicable), providing asset and transaction reporting, execution and settlement of directed transactions, processing benefit payments and loans, maintaining participant accounts, valuing plan assets, conducting non-discrimination testing, preparing Forms 5500 and other required filings, and producing statements and reports regarding overall plan and individual participant holdings. Allfirst states that these trust services will be necessary regardless of whether the Client Plan's assets are invested in the ARK Funds. Thus, Allfirst represents that its proposed receipt of fees for both secondary services at the Fund-level and trustee services at the Plan-level will not involve the receipt of ''double fees'' for duplicative services to the Client Plans because a Fund will be charged for custody and other services relative to the individual securities owned by the Fund, while a Client Plan will charged for the maintenance of Plan accounts reflecting ownership of the Fund shares and other assets.[3]

Allfirst represents that for each Client Plan, the combined total of all fees it will receive directly and indirectly from the Client Plans for the provision of services to the Plans and/or to the ARK Funds will not be in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.[4]

8. Allfirst will maintain a system of internal accounting controls for the crediting of all fees to the Client Plans. In addition, Allfirst has retained the services of PricewaterhouseCoopers LLP (the Auditor), an independent accounting firm, to audit annually the crediting of fees to the Client Plans under this program. Such audits will provide independent verification of the proper crediting to the Client Plans.

In its annual audit of the credit program, the Auditor will: (i) Review and test compliance with the specific operational controls and procedures established by Allfirst for making the credits; (ii) verify on a test basis the monthly credit factors transmitted to Allfirst by the ARK Funds; (iii) verify on a test basis the proper assignment of identification fields to the Client Plans; (iv) verify on a test basis the credits paid in total to the sum of all credits paid to each Client Plan; and (v) recompute, on a test basis, the amount of the credit determined for selected Client Plans and verify that the credit was made to the proper Client Plan account.

In the event either the internal audit by Allfirst or the independent audit by the Auditor identifies an error made in the crediting of fees to the Client Plans, Allfirst will correct the error. With respect to any shortfall in credited fees to a Client Plan, Allfirst will make a cash payment to the Client Plan equal to the amount of the error plus interest paid at money market rates offered by Allfirst for the period involved. Any excess credits made to a Client Plan will be corrected by an appropriate deduction from the Client Plan account or reallocation of cash during the next payment period after discovery of the error to reflect accurately the amount of total credits due to the Client Plan for the period involved.

9. Allfirst represents that the use of the ''crediting'' fee structure will be available for any investments made by Client Plans in the ARK Funds. The use of this fee structure must be approved prior to the Client Plan's initial investment in the ARK Funds by a Second Fiduciary acting for the Client Plan. The Second Fiduciary will receive full and detailed written disclosure of information concerning the ARK Funds in advance of any investment by the Client Plan in the ARK Funds, including the Fund prospectuses as well as a separate statement describing the crediting fee structure.

After consideration of such information, the Second Fiduciary will authorize in writing the investment of assets of the Client Plan in one or more specified ARK Funds and the fees to be paid by the ARK Funds to Allfirst. In addition, the Second Fiduciary of each Client Plan invested in a particular Fund will receive full written disclosure, in a statement separate from the Fund prospectus, of any proposed increases in the rates of fees charged by Allfirst to the ARK Funds for secondary services which are above the rates reflected in the Fund prospectuses, at least thirty (30) days prior to the effective date of such increase.

In the event that Allfirst provides an additional secondary service for which a fee is charged or there is an increase in the rate of fees paid by the ARK Funds to Allfirst for any secondary service, including any increase resulting from a decrease in the number or kind of services performed by Allfirst for such fees in connection with a previously authorized secondary service, Allfirst will, at least 30 days in advance of the implementation of such additional service or fee increase, provide written notice to the Second Fiduciary explaining the nature and the amount of the additional service for which a fee will be charged or the nature and amount of the increase in fees of the affected Fund.[5] Such notice

[3] The Department notes that although certain transactions and fee arrangements are the subject of an administrative exemption, a Client Plan fiduciary must still adhere to the general fiduciary responsibility provisions of section 404 of the Act. Thus, the Department cautions the fiduciaries of the Client Plans investing in the ARK Funds that they will have an ongoing duty under section 404 of the Act to monitor the services provided to the Client Plans to ensure that the fees paid by the Client Plans for such services are reasonable in relation to the value of the services provided. Such responsibilities will include determinations that the services provided are not duplicative and that the fees are reasonable in light of the level of services provided.

The Department also notes that Allfirst, as a trustee and investment manager for a Client Plan in connection with the decision to invest Client Plan assets in the ARK Funds, will have a fiduciary duty to monitor all fees paid by a Fund to Allfirst, its affiliates, and third parties for services provided to the Fund to ensure that the totality of such fees will be reasonable and will not involve the payment of any ''double'' fees for duplicative services to the Fund by such parties.

[4] The Department is expressing no opinion in this proposed exemption as to whether the fee arrangements discussed herein will comply with section 408(b)(2) of the Act and the regulations thereunder (see 29 CFR 2550.408b–2).

[5] With respect to increases in fees, the Department notes that an increase in the amount of a fee for an existing secondary service (other than through an increase in the value of the underlying assets in the ARK Funds), or the imposition of a fee for a newly-established secondary service, shall be considered an increase in the rate of such fees. However, in the event a secondary service fee has already been described in writing to the Second Fiduciary and the Second Fiduciary has provided authorization for the fee, and such fee was temporarily waived, no further action by Allfirst would be required in order for the Bank to receive such fee at a later time. Thus, for example, no further disclosure would be necessary if Allfirst had received authorization for a fee for custodial services from Plan investors and subsequently determined to waive the fee for a period of time in order to attract new investors but later charged the fee.

will be made separate from the Fund prospectus and will be accompanied by a Termination Form. The Second Fiduciary also will receive full written disclosure in a Fund prospectus or otherwise of any increases in the rate of fees charged by Allfirst to the ARK Funds for investment advisory services, even though such fees will be credited to the investing Client Plans.

The authorizations made by a Second Fiduciary of any Client Plan will be terminable at will, without penalty to the Client Plan, upon receipt by Allfirst of written notice of termination. A form (the Termination Form) expressly providing an election to terminate the authorization, with instructions on the use of the form, will be supplied to the Second Fiduciary no less than annually. However, the Termination Form will not need to be supplied to the Second Fiduciary for an annual reauthorization sooner than six months after such Termination Form is supplied for an additional service or for an increase in fees (as discussed above), unless another Termination Form is required to disclose additional services or fee increases. The Termination Form will instruct the Second Fiduciary that the authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by Allfirst of written notice from the Second Fiduciary, and that failure to return the Termination Form will result in the continued authorization of Allfirst to engage in the subject transactions on behalf of the Client Plan.

The Termination Form will be used to notify Allfirst in writing to effect a termination by selling the shares of the ARK Funds held by the Client Plan, requesting such termination within one business day following receipt by Allfirst of the form. If, due to circumstances beyond the control of Allfirst, the sale cannot be executed within one business day, Allfirst will be obligated to complete the sale within the next business day.

10. Allfirst represents that for smaller Client Plans, the Fund-level investment advisory fees generally do not exceed the Plan-level investment management fees, so that the Client Plan will not benefit from a Fund-level fee credit. In these cases, if the Second Fiduciary authorizes the fee structure, Allfirst will waive the Plan-level investment management fees that would otherwise be charged for the Client Plan's assets invested in the ARK Funds, so that the Plan-level fees will be offset and the Client Plan will pay only one investment management fee for those assets, at the Fund-level. This fee structure, which is one of the fee structures described in PTE 77–4, will ensure that Allfirst does not receive any additional investment management, advisory or similar fee as a result of investments in the ARK Funds by the Client Plans.

Disclosures, approvals, and notifications with regard to any changes in fees or secondary services will be handled in the same manner as for the fee structure described in paragraph 10 above, with one exception. The exception is that notifications with regard to increases in rates of investment advisory fees for the ARK Funds will conform to the procedures for increases in rates of secondary service fees as described above. Therefore, in such instances, there will be prior written notification of the fee increase to the Second Fiduciary for the Client Plan and a Termination Form will be provided. The reason for the exception is that the total fees paid by the Client Plan, under this fee structure, will be directly affected by any increases in Fund-level investment advisory fees because such fees will not be credited back to the Client Plan.

11. Allfirst states that a Second Fiduciary will always receive a written statement giving full disclosure of the fee structures prior to any investment in the ARK Funds. The disclosure statement will explain why Allfirst believes that the investment of assets of the Client Plan in the ARK Funds may be appropriate. The disclosure statement also will describe whether there are any limitations on Allfirst with respect to which Client Plan assets may be invested in shares of the ARK Funds and, if so, the nature of such limitations.[6]

12. On an annual basis, the Second Fiduciary of a Client Plan investing in the ARK Funds will receive copies of the current Fund prospectuses and, upon such fiduciary's request, a copy of the Statement of Additional Information for such ARK Funds, as well as copies of the annual financial disclosure reports containing information about the Fund and independent auditor findings.

In addition, if the ARK Funds obtain brokerage services in the future from any broker-dealers that are affiliates of Allfirst, Allfirst will provide at least annually to the Second Fiduciary of Client Plans investing in the ARK Funds written disclosures indicating the following: (i) The total, expressed in dollars, of brokerage commissions of each Fund that are paid to Allfirst by such Fund; (ii) the total, expressed in dollars, of brokerage commissions of each Fund that are paid by such Fund to brokerage firms unrelated to Allfirst; (iii) the average brokerage commissions per share, expressed as cents per share, paid to Allfirst by each Fund portfolio; and (iv) the average brokerage commissions per share, expressed as cents per share, paid by each Fund portfolio to brokerage firms unrelated to Allfirst. All such brokerage services would be provided in accordance with section 17(e) of the 1940 Act and Rule 17e–1 thereunder. Such provisions require, among other things, that the commissions, fees, or other remuneration for any brokerage services provided by an affiliate of an investment company's investment adviser be reasonable and fair compared to what other brokers receive for comparable transactions involving similar securities.

13. No sales commissions will be paid by the Client Plans in connection with the purchase or sale of shares of the ARK Funds. In addition, no redemption fees will be paid in connection with the sale of shares by the Client Plans to the ARK Funds. Allfirst states that it will not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions. Allfirst states further that all other dealings between the Client Plans and the ARK Funds will be on a basis no less favorable to the Client Plans than such dealings will be with the other shareholders of the ARK Funds.

14. In summary, Allfirst represents that the transactions described herein will satisfy the statutory criteria of section 408(a) of the Act because: (a) The ARK Funds will provide the Client Plans with a more effective investment vehicle than collective investment ARK Funds maintained by Allfirst without any increase in investment management, advisory, or similar fees paid to Allfirst; (b) Allfirst will require annual audits by an independent accounting firm to verify the proper crediting to the Client Plans of investment advisory fees charged by Allfirst to the ARK Funds; (c) with respect to any investments in a Fund by the Client Plans and the payment of any fees by the Fund to Allfirst, a Second Fiduciary will receive full written disclosure of information concerning the Fund, including a current prospectus and a statement describing the fee structure, and will authorize in writing the investment of the Client

[6] See section II(d) of PTE 77–4 which requires, in pertinent part, that an independent plan fiduciary receive a current prospectus issued by the investment company and a full and detailed written disclosure of the investment advisory and other fees charged to or paid by the plan and the investment company, including a discussion of whether there are any limitations on the fiduciary/investment adviser with respect to which plan assets may be invested in shares of the investment company and, if so, the nature of such limitations.

Plan's assets in the Fund and the fees paid by the Fund to Allfirst; (d) any authorizations made by a Client Plan regarding investments in a Fund and fees to be paid to Allfirst, or any increases in the rates of fees for secondary services which will be retained by Allfirst, will be terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by Allfirst of written notice of termination from the Second Fiduciary; (e) no commissions or redemption fees will be paid by the Client Plan in connection with either the acquisition of Fund shares or the sale of Fund shares; (f) Allfirst will not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions; and (g) all dealings between the Client Plans and the ARK Funds will be on a basis which is at least as favorable to the Client Plans as such dealings are with other shareholders of the ARK Funds.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams or Ms. Karin Weng of the Department, telephone (202) 219–8194 or 219–8881, respectively. (These are not toll-free numbers.)

John Hancock Mutual Life Insurance Company (John Hancock), Located in Boston, Masachusetts

[Application No. D–10718]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[7]

Section I—Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to: (1) The receipt of common stock of John Hancock Financial Services, Inc., the holding company for John Hancock (the Holding Company); or (2) the receipt of cash or policy credits, by or on behalf of any eligible policyholder (the Eligible Policyholder) of John Hancock which is an employee benefit plan (the Plan), subject to applicable provisions of the Act and/or the Code, other than certain Eligible Policyholders which are Plans maintained by John Hancock or an affiliate for their own employees (the John Hancock Plans), in exchange for such Eligible Policyholder's membership interest in John Hancock, in accordance with the terms of a plan of reorganization (the Plan of Reorganization) adopted by John Hancock and implemented pursuant to Chapter 175 of the Massachusetts General Laws.

In addition, the restrictions of section 406(a)(1)(E) and (a)(2) and section 407(a)(2) of the Act shall not apply to the receipt or holding, by the John Hancock Plans, of employer securities in the form of excess Holding Company stock, in accordance with the terms of the Plan of Reorganization.

This proposed exemption is subject to the conditions set forth below in Section II.

Section II—General Conditions

(a) The Plan of Reorganization is implemented in accordance with procedural and substantive safeguards that are imposed under Massachusetts Insurance Law and is subject to review and supervision by the Massachusetts Commissioner of Insurance (the Commissioner).

(b) The Commissioner reviews the terms of the options that are provided to Eligible Policyholders of John Hancock as part of such Commissioner's review of the Plan of Reorganization, and the Superintendent only approves the Plan of Reorganization following a determination that such Plan of Reorganization is fair and equitable to all Eligible Policyholders and is not detrimental to the public.

(c) Both the Commissioner and the Superintendent concur on the terms of the Plan of Reorganization.

(d) Each Eligible Policyholder has an opportunity to vote to approve the Plan of Reorganization after full written disclosure is given to the Eligible Policyholder by John Hancock.

(e) One or more independent fiduciaries of a Plan that is an Eligible Policyholder receives Holding Company stock, cash or policy credits pursuant to the terms of the Plan of Reorganization and neither John Hancock nor any of its affiliates exercises any discretion or provides ''investment advice,'' as that term is defined in 29 CFR 2510.3–21(c), with respect to such acquisition.

(f) After each Eligible Policyholder is allocated 17 shares of Holding Company stock, additional consideration is allocated to Eligible Policyholders who own participating policies based on actuarial formulas that take into account each participating policy's contribution to the surplus of John Hancock which formulas have been approved by the Commissioner.

(g) With respect to a John Hancock Plan, where the consideration may be in the form of Holding Company stock an independent Plan fiduciary —

(1) Determines whether the Plan of Reorganization is in the best interest of the John Hancock Plans and their participants and beneficiaries.

(2) Votes at the special meeting of Eligible Policyholders on the proposal to approve or not to approve the Plan of Reorganization.

(3) If the vote is to approve the Plan or Reorganization,

(i) Decides whether the affected John Hancock Plan should receive Holding Company stock or cash (should the latter option be available) and receives such consideration on behalf of the affected John Hancock Plan;

(ii) Monitors, on behalf of the affected John Hancock Plan, the acquisition and holding of the shares of any Holding Company stock received;

(iii) Makes determinations on behalf of the John Hancock Plan with respect to voting and the continued holding of the shares of Holding Company stock received by such Plan; and

(iv) Disposes of any Holding Company stock held by the John Hancock Plan which exceeds the limitation of section 407(a)(2) of the Act as reasonably as practicable but in no event later than six months year following the effective date of the demutualization;

(v) Takes all actions that are necessary and appropriate to safeguard the interests of the John Hancock Plans; and

(vi) Provides the Department with a complete and detailed final report as it relates to the John Hancock Plans prior to the effective date of the demutualization.

(h) All Eligible Policyholders that are Plans participate in the transactions on the same basis within their class groupings as other Eligible Policyholders that are not Plans.

(i) No Eligible Policyholder pays any brokerage commissions or fees in connection with their receipt of Holding Company stock or in connection with the implementation of the commission-free sales and purchase programs.

(j) All of John Hancock's policyholder obligations remain in force and are not affected by the Plan of Reorganization.

Section III—Definitions

For purposes of this proposed exemption:

(a) The term ''John Hancock'' means The John Hancock Mutual Life Insurance Company and any affiliate of John Hancock as defined in paragraph (b) of this Section III.

[7] For purposes of this proposed exemption, reference to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(b) An ''affiliate'' of John Hancock includes —

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with John Hancock (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.);

(2) Any officer, director or partner in such person; and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) The term ''Eligible Policyholder'' means a policyholder whose name appears on the conversion date on John Hancock's records as the owner of a policy under which there is a right to vote and which, on both the December 31 immediately preceding the conversion date and the date the John Hancock's Board of Directors first votes to convert to stock form, is in full force for its full basic benefits with no unpaid premiums or consideration at the expiration of any applicable grace period, or which is being continued under a nonforfeiture benefit and continues to be eligible for participation in John Hancock's annual distribution of divisible surplus.

(d) The term ''policy credit'' means: (1) For an individual or joint ordinary life insurance policy, an increase to the paid-up dividend addition value; and (2) for all other individual or joint life policies and annuities, (i) if the policy or contract has a defined account value, an increase in the account value, or (ii) if the policy or contract does not have a defined account value, an increase to the dividend accumulation fund.

Summary of Facts and Representations

1. John Hancock is a mutual life insurance company organized under the laws of the Commonwealth of Massachusetts on April 18, 1862. As of December 31, 1998, John Hancock and its subsidiaries had total assets in excess of $76 billion and had approximately $310 billion of individual life insurance in force.

John Hancock has a number of subsidiaries and affiliates that provide a variety of financial services, including investment management and brokerage services. John Hancock and its investment management subsidiaries had approximately $124.4 billion in assets under management as of December 31, 1998. As a mutual life insurance company, John Hancock has no stockholders. Instead, policyholders of John Hancock are ''members'' of the company and in that capacity, they are entitled to vote to elect the directors of the company and would be entitled to share in the assets of the company if it were liquidated.

2. John Hancock and its affiliates provide a variety of fiduciary and other services to employee benefit plans covered under relevant provisions of the Act and the Code. By providing these services John Hancock may be considered a party in interest with respect to such Plans under section 3(14)(A) and (B) of the Act or the related derivative provisions. The services provided by John Hancock and its affiliates to Plans include plan administration, investment management and related services. Many of the Plans to which John Hancock provides services are also John Hancock policyholders. As of December 31, 1997 (the most recent date such information is available), John Hancock had issued over 27,000 outstanding policies and contracts to employee pension and welfare benefit plans. These Plans include defined benefit pension plans, defined contribution plans (such as section 401(k) plans), and welfare benefit plans providing welfare benefit plan coverage such as group life, short- and long-term disability, accidental death and dismemberment and group health coverage.

3. John Hancock and its affiliates also sponsor the following Plans, which are collectively referred to herein as ''the John Hancock Plans'':

(a) *The John Hancock Mutual Life Insurance Company Pension Plan (the Pension Plan)* is a defined benefit pension plan that benefits the home office and the field employees of the company as well as its unionized managerial agents and employees of most of John Hancock's domestic subsidiaries. The trustee of the Pension Plan is Investors Bank & Trust Company (Investors). Investment decisions for the Pension Plan are made by either of two internal committees within John Hancock, *i.e.*, the Directors' Employee Benefits Plan Committee or the Plan Investment Advisory Committee. As of December 31, 1998, the Pension Plan had approximately 26,818 participants and total assets of $2,056,832,491.

(b) *The Pension Plan for Personnel in the General Agencies of John Hancock Mutual Life Insurance Company (the GA Pension Plan)* is a multiple employer, defined benefit pension plan that covers statutory employees of John Hancock's general agencies. The trustee of the GA Pension Plan is Investors. The decisionmakers with respect to investments for the GA Pension Plan are the two internal committees identified above in paragraph 3(a). As of December 31, 1997 (the most recent date such information is available), the GA Pension Plan had 4,668 participants and total assets of $186,343,278.

(c) *The Investment-Incentive Plan for John Hancock Employees (TIP)* is a section 401(k) profit sharing plan covering home office employees of John Hancock as well as certain domestic subsidiaries. The trustee of TIP is Investors. Because TIP is participant-directed and intended to qualify under section 404(c) of the Act, its investment options are selected by two internal committees within John Hancock. They are the Directors' Employee Benefits Plan Committee and the Savings Plan Investment Committee. As of December 31, 1998, TIP had 8,655 participants and total assets of $848,545,190.

(d) *The John Hancock Savings and Investment Plan (SIP)* is a section 401(k) profit sharing plan covering unionized managerial agents of John Hancock as well as certain other employees in the managerial agency system. SIP shares the same trustee and decision-making committees as TIP. As of December 31, 1998, SIP had 2,145 participants and total assets of $135,847,910.

(e) *The John Hancock Mutual Life Insurance Company Employee Welfare Plan (the Employee Welfare Plan)* is a welfare benefit plan maintained by John Hancock and its employees and those of its domestic subsidiaries. The Employee Welfare Plan provides health, life insurance, dental, vision, temporary and long-term disability, and long-term care coverage. The Employee Welfare Plan has 3 trustees, each of whom is an officer of John Hancock. Investment decisions for the non-insurance plan assets of the Employee Welfare Plan are made by the same investment committees as the Pension Plan described above in paragraph 3(a). As of December 31, 1997, the Employee Welfare Plan had 17,148 participants (including beneficiaries of deceased participants) and total assets of $87,066,100.

(f) *The GA Association Employee Welfare Plan (the GA Employee Welfare Plan* is a multiple employer welfare benefit plan maintained by John Hancock to enable General Agents who are members of the John Hancock General Agency Association to provide benefits to personnel who are common law or statutory employees of the general agencies. The GA Employee Welfare Plan, which provides health, life, long-term disability and voluntary accidental death and dismemberment benefits, is a fully-insured arrangement. As of December 31, 1998, the GA Employee Welfare Plan had 3,595 participants.

(g) *The John Hancock Funds 401(k) Plan (the 401(k) Plan).* The John Hancock 401(k) Plan is maintained by the Berkeley Financial Group which consists of a group of companies that operate John Hancock's mutual fund business. The John Hancock 401(k) Plan covers employees of that group. The John Hancock 401(k) Plan, which provides for a cash and deferred compensation arrangement, has 3 trustees. Investment decisions for the John Hancock 401(k) Plan are made by the participants. As of December 31, 1998, the John Hancock 401(k) Plan had 792 participants and total assets of $26,590,219.

(h) *The John Hancock Property & Casualty Money Purchase Pension Plan (the Property & Casualty Plan).* John Hancock holds a small guaranteed investment contract on behalf of the Property & Casualty Plan which was established for its former property and casualty subsidiary. The Property & Casualty Plan, which formerly provided retirement benefits until it was frozen, has one trustee who is responsible for making investment decisions affecting such Plan. As of December 31, 1998, the Property & Casualty Plan had 1,311 participants and total assets of $670,147.

In addition to the above, John Hancock holds a group life policy on behalf of certain retirees of Unigard Property and Casualty Company. Although this company was sold recently, John Hancock retains certain benefit responsibilities with respect to its retiree population.

3. John Hancock's Board of Directors authorized its management to develop a plan of demutualization (*i.e.*, the Plan of Reorganization) pursuant to which John Hancock would be converted from a mutual life insurance company to a stock life insurance company. On August 31, 1999, John Hancock's Board of Directors formally adopted the Plan of Reorganization.

In order to implement the Plan of Reorganization, John Hancock requests an individual exemption from the Department that would cover the receipt of Holding Company stock, cash or policy credits by Eligible Policyholders that are Plans in exchange for their existing membership interests in John Hancock. Although John Hancock is not requesting an exemption for distributions of Holding Company stock to the Pension Plan, the GA Pension Plan, TIP, SIP, the 401(k) Plan and the Property & Casualty Plan because it believes such stock would constitute ''qualifying employer securities'' within the meaning of section 407(d)(5) of the Act and that section 408(e) would apply to such distributions,[8] it is nevertheless requesting exemptive relief from the Department to the extent that John Hancock Plans, such as the Employee Welfare Plan and the GA Employee Welfare Plan, receive Holding Company stock which results in violations of section 406(a)(1)(E) and (a)(2) of the Act and section 407(a)(2) of the Act.[9] Since the Holding Company stock that will be held by these John Hancock Plans will exceed 10 percent of the fair market value of the assets of such Plans, John Hancock has retained U.S. Trust Company, N.A. (U.S. Trust) to serve as the independent fiduciary for these Plans as well as for any other John Hancock Plan whose Holding Company Stock exceeds 10 percent of such Plan's assets.

4. John Hancock proposes to convert from a mutual life insurance company to a stock life insurance company under Massachusetts Insurance Law. The principal purposes for the reorganization are to enhance John Hancock's access to capital markets and raise capital that would permit it and the Holding Company to expand their existing business and develop new business opportunities in the insurance and financial services industries. Growth will enable John Hancock to reduce its unit expenses through economies of scale. This growth will be facilitated by John Hancock's ability to acquire other companies using its own stock as acquisition currency. Additionally, access to capital markets will enable John Hancock to invest in new technology, improved customer service, new products and channels of distribution. John Hancock will also obtain more financial flexibility with which to maintain its ratings and financial stability.

In addition, the reorganization of John Hancock pursuant to the Plan of Reorganization will provide Eligible Policyholders with shares of common stock of the Holding Company, cash or policy credits in exchange for their illiquid membership interests. Thus, Eligible Policyholders will realize economic value from their membership interests that is otherwise unavailable to them. However, the demutualization will not, in any way, reduce the benefits, values, guarantees or dividend eligibility of existing policies or contracts issued by John Hancock.

As part of the reorganization, the Holding Company will be established and will become the stock holding company for John Hancock and its subsidiaries. Therefore, after the reorganization, John Hancock, as a stock insurer and a subsidiary of the Holding Company, will have access through the Holding Company to the capital markets, enabling John Hancock to obtain capital from a variety of sources. The Holding Company will also own 100 percent of two new holding companies being established to own existing Canadian subsidiaries of John Hancock and most other foreign insurance subsidiaries, respectively. Most foreign operations are being separated from the domestic operations of John Hancock to achieve improved financial ratios for John Hancock and maximize performance results for policyholders and shareholders.

John Hancock's management believes that the holding company structure will provide several benefits to John Hancock. In this regard, this structure will afford increased flexibility in raising additional capital in the form of debt and equity financings and in pursuing growth in John Hancock's current and future insurance and non-insurance business. The new organization will benefit from increased flexibility in allocating capital and resources among the various subsidiaries of John Hancock. Further, the transfer of the international subsidiaries to the Holding Company will provide a distinct focus for the foreign operations of John Hancock while also improving its risk-based capital ratio.

5. The terms of the Plan of Reorganization are subject to the approval of the Commissioner of Insurance of the Commonwealth of

[8] The Department expresses no opinion herein on whether the Holding Company stock will constitute qualifying employer securities and whether such distributions will satisfy the terms and conditions of section 408(e) of the Act.

[9] Section 406(a)(1)(E) of the Act prohibits the acquisition by a plan of any employer security which would be in violation of section 407(a) of the Act. Section 406(a)(2) of the Act states that no fiduciary who has authority or discretion to control the assets of a plan shall permit the plan to hold any employer security if he [or she] knows that holding such security would violate section 407(a) of the Act. Section 407(a)(1) of the Act prohibits the acquisition by a plan of any employer security which is not a qualifying employer security. Section 407(a)(2) of the Act provides that a plan may not acquire any qualifying employer security, if immediately after such acquisition, the aggregate fair market value of such securities exceeds 10 percent of the fair market value of the plan's assets.

In addition to the above, section 407(f) of the Act, which is applicable to the holding of a qualifying employer security by a plan other than an eligible individual account plan, requires that: (a) Immediately following its acquisition by a plan, no more than 25 percent of the aggregate amount of stock of the same class issued and outstanding at the time of acquisition is held by the plan; and (b) at least 50 percent of the stock be held by persons who are independent of the issuer. John Hancock notes, however, that the holding by the John Hancock Plans of shares of Holding Company stock will not violate the provisions of section 407(f) of the Act.

Massachusetts. However, market conditions, regulatory requirements and business considerations may also influence the final sequence of events. Subject to the foregoing, under John Hancock's internal working proposal for carrying out the demutualization, it is currently expected that the following steps will occur pursuant to the Plan of Demutualization:

(a) *Formation of a Stock Life Insurance Company.* John Hancock will demutualize and become a stock life insurance company by operation of section 19E of Chapter 175 of the General Laws of the Commonwealth of Massachusetts. Under the Plan of Reorganization, each policyholder's membership interest in John Hancock will be extinguished. As compensation for their membership interests, Eligible Policyholders will receive shares of Holding Company stock, cash or policy credits. John Hancock will become a stock company and a wholly owned subsidiary of the Holding Company. The Holding Company will also own the outstanding shares of two newly-formed holding companies which will own John Hancock's Canadian business and most of its international businesses, respectively.

(b) *Initial Public Offering (the IPO).* The Holding Company will sell new Holding Company shares in an underwritten IPO, on the date of the demutualization of John Hancock. It is expected that the demutualization will occur during early February 2000. However, the effective date may be extended for a period of up to six months if requested by John Hancock subject to approval by the Commissioner. At present, the size of the IPO is not known.

(c) *Contribution to the Capital of John Hancock.* Following the transactions described above, the Holding Company will contribute cash raised in the IPO (after the payment of transaction expenses) to John Hancock in an amount at least equal to the amount required for John Hancock to maintain a risk-based capital ratio of not less than 200 percent following the payment and crediting of cash and establishment of reserves for policy credits called for by the Plan of Reorganization and the payment of expenses resulting from the transactions contemplated by the Plan of Reorganization.

6. In addition to providing enhanced capital markets, it is anticipated that the demutualization will provide the flexibility to cause John Hancock's non-insurance operations to become direct holdings of an ''upstream'' holding company. Further, the conversion will enable John Hancock to use stock options or other equity-based compensation arrangements in order to attract and retain talented employees.

John Hancock believes these consequences of the conversion will benefit all of its policyholders. John Hancock further explains that its insurance policies will remain in force and policyholders will be entitled to receive the benefits under their policies and contracts to which they would have been entitled if the Plan of Reorganization had not been adopted.

7. As noted above, John Hancock will demutualize under Massachusetts Insurance Law. Section 19E of the Massachusetts demutualization law establishes an approval process for the demutualization of a life insurance company organized under Massachusetts law. Specifically, Section 19E requires that the demutualization plan be filed with, and approved by, the Massachusetts Commissioner of Insurance. The Commissioner may approve the demutalization plan only after notice is given to the insurer, its directors, officers, employees and policyholders and a hearing on such plan is held. All persons to whom notice is given have the right to appear and be heard at the hearing and to present oral or written comments.[10]

After the hearing, John Hancock explains that the Commissioner will approve the demutualization plan if she determines that the plan is not prejudicial to the insurer's policyholders or to the ''insuring public.'' The Commissioner must also determine that the demutualization plan conforms to the provisions of Section 19E. In pertinent part, Section 19E requires—

(a) that reasonable notice of and the procedure for vote of the policyholders have been provided;

(b) that the plan gives each eligible policyholder, in exchange for his or her membership interests in the insurer, appropriate consideration determined under a fair and reasonable formula, which is based upon the insurer's entire surplus as adjusted according to paragraph 3 of section 19E;

(c) that, subject to certain exceptions, the plan gives each eligible policyholder a preemptive right to acquire his or her proportionate part of all of the proposed capital stock of the insurer within a reasonable time period, and to apply the amount of his or her consideration to the purchase of such stock, provided that, under certain circumstances, the Commissioner has the power to approve a plan which does not include preemptive rights;

(d) that if, applicable, shares are offered to policyholders at a price not greater than they are offered under the plan to others;

(e) that the plan provides for the payment to each policyholder of consideration which may consist of cash, securities, a certificate of contribution, additional life insurance or annuity benefits, increased dividends or other consideration or any combination of such forms of consideration;

(f) that the plan, when completed, shall provide for the converted insurer's paid-in capital stock to be in an amount not less than the minimum paid-in capital stock and the net cash surplus required of a new domestic stock insurer upon initial authorization to transact like kinds of insurance;

(g) that the insurer's management has not, through reduction in volume of new business written, or cancellation or through any other means, sought to reduce, limit or affect the number or identity of the insurer's policyholders to be entitled to participate in the demutualization plan, or to otherwise secure for individuals comprising management any unfair advantage through such demutualization plan; and

(h) if applicable, that the classifications of management and employee groups to be offered shares not subscribed for by policyholders in the preemptive offering are reasonable.

Section 19E permits the Commissioner to employ staff personnel and to engage outside consultants to assist her in determining whether a demutualization plan meets the requirements of section 19E and any other relevant provisions of chapter 175 of Massachusetts General Laws. A decision by the Commissioner to approve a demutualization plan under section 19E is subject to judicial review in the Massachusetts courts.

In addition to being approved by the Commissioner, John Hancock represents that the demutualization plan must be approved by the policyholders of the insurer. In this regard, under section 19E, policyholders must be provided with notice of a meeting convened for the purpose of voting on whether to approve the demutualization plan. Moreover, the demutalization plan must be approved by a vote of not less than two-thirds of the votes of approximately 3 million policyholders who may vote in person, by proxy or by mail.[11]

8. John Hancock represents that it is licensed to transact business in all fifty states. However, only the State of New York requires that a foreign insurance company that is planning to demutualize file a copy of its demutualization plan with state insurance authorities. In this regard, John Hancock explains that section 1106(i) of the New York Insurance Law

[10] Final approval by the Commissioner is expected to occur on or about January 15, 2000. The public hearing regarding the proposed Plan of Reorganization is expected to occur around November 25, 1999.

[11] The notice of the policyholder meeting were mailed during the week of September 13, 1999. The policyholder meeting is scheduled to be convened on or about November 30, 1999.

[Section 1106(i)] authorizes the Superintendent to review the demutualization plan of a foreign life insurer licensed in New York and to specify the conditions that the Superintendent would impose in order for the foreign insurer to retain its New York license following its demutualization. Specifically, Section 1106(i) requires that a foreign life insurer licensed in New York file with the Superintendent a copy of the demutualization plan at least 90 days prior to the earlier of (a) the date of any public hearing required to be held on the plan of reorganization by the insurer's state of domicile and (b) the proposed date of the demutualization.

If, after examining the plan of reorganization, the Superintendent finds that the plan is not fair or equitable to the New York policyholders of the insurer, the Superintendent must set forth the reasons for his findings. In addition, the Superintendent must notify the insurer and its domestic state insurance regulator of his findings and his reasons for such findings and advise of any requirements he considers necessary for the protection of current New York policyholders in order to permit the insurer to continue to conduct business in New York as a stock life insurer after the demutualization. In the event the Superintendent has any objections to the Plan of Reorganization, John Hancock represents that it will amend the Plan so that it will meet the approval of the Superintendent or otherwise, work out a satisfactory solution with the Superintendent.

9. John Hancock's Plan of Reorganization will provide for Eligible Policyholders to receive common stock of the Holding Company, cash or policy credits as consideration for the termination of their membership interests in the mutual company, which interests will be extinguished as a result of the demutualization. For this purpose, an Eligible Policyholder is essentially a policyholder whose name appears on the conversion date on the insurer's records as owner of a policy under which there is a right to vote. On both the December 31 immediately preceding the conversion date and the date the insurer's board of directors first votes to convert to stock form, the policy must be in full force for its full basic benefits with no unpaid premiums or consideration at the expiration of any applicable grace period. Alternatively, the policy must be continued under a nonforfeiture benefit. In any event, the insurance policy must continue to be eligible for participation in the insurer's annual distribution of divisible surplus.

Solely for purposes of calculating the amount of Holding Company stock, cash or policy credits that will be given to an Eligible Policyholder in exchange for his or her membership interest, John Hancock will allocate to each Eligible Policyholder (but not necessarily issue) shares of Holding Company stock equal to the sum of: (a) A fixed component of consideration consisting of 17 shares of Holding Company stock; and (b) if applicable, a variable component of consideration based on the contributions to surplus made by the Eligible Policyholder's in-force policies. The allocation methodology must be fair and reasonable, a finding that the Commissioner is required to make after the hearing. The allocation formulas are also subject to review by the Superintendent.

10. Section 7.3 of John Hancock's Plan of Reorganization provides that an Eligible Policyholder will be entitled to receive Holding Company stock if such Policyholder affirmatively elects, on a form provided to such Eligible Policyholder that has been properly completed and received by John Hancock prior to the date of the special policyholder meeting, a preference to receive stock. Holding Company stock will also be issued to an Eligible Policyholder, regardless of such Policyholder's election, to the extent funds available are inadequate to pay cash to all such Eligible Policyholders who will be receiving the same number of shares.[12]

In addition, Section 7.3 of John Hancock's Plan of Reorganization states that an Eligible Policyholder will be entitled to receive cash in lieu of allocable Holding Company stock where such Eligible Policyholder's address for mailing purposes, as shown on John Hancock's records: (a) Is an address where mail is undeliverable or is deemed to be undeliverable in accordance with guidelines approved by the Commissioner; or (b) is located outside of the United States. Further, an Eligible Policyholder will be entitled to receive cash instead of allocable Holding Company stock to the extent that his or her insurance policy is subject to a lien or bankruptcy proceeding.

Finally, Section 7.3 of John Hancock's Plan of Reorganization provides that an Eligible Policyholder will receive policy credits instead of allocable Holding Company stock with respect to any policy that is: (a) An individual retirement annuity contract within the meaning of section 408(b) of the Code or a taxsheltered annuity contract within the meaning of section 403(b) of the Code; (b) an individual annuity contract that has been issued pursuant to a plan qualified plan under section 401(a) of the Code directly to the plan participant; or (c) an individual life insurance policy that has been issued pursuant to a plan qualified under section 401(a) of the Code directly to the plan participant.

The cash or policy credits will have a value equal the greater of the price per share of Common Stock in the IPO, which will occur at the time of the demutualization or the average closing price of the Common Stock as reflected on the New York Stock Exchange for the first twenty days of trading, subject to a maximum of 120 percent of the initial stock price.[13] This will ensure that

[12] John Hancock's Plan of Reorganization provides that, as an optional method, each non-trusteed, qualified pension or profit sharing plan that is entitled to receive Holding Company stock may direct John Hancock to place the stock received as a result of the demutualization in a master trust (the Master Trust) established by John Hancock for this express purpose. It is represented that the John Hancock Plans will not participate in the Master Trust because they will have their own trusts in place.

The Master Trust, which will be incorporated through the Adoption Agreement as part of each participating Plan, will have an indefinite duration. The trustee (the Trustee) of the Master Trust will be independent of John Hancock. The Trustee will hold the shares of Holding Company stock for the benefit of the participating Plan. The stock will remain in the Master Trust until the Plan fiduciary instructs the Trustee either to sell the stock on the open market or to distribute the stock to the Plan. A participating Plan may, under no circumstances, direct the Trustee to sell its shares of Holding Company stock to the Holding Company. Each Plan will be responsible for its share of the fees and expenses of the Master Trust as well as for the payment of brokerage commissions incurred in connection with the sale of Holding Company Stock after the termination of the commission-free sales program described in Representation 13 provided such program has been available to the Plan.

It is anticipated that all stock dividends that are received by a Plan will be held in the Master Trust subject to withdrawal by the Plan at any time. However, cash dividends will be paid by the Trustee to the applicable Plan. It is also anticipated that all voting rights will be passed through to the participating Plans.

[13] John Hancock represents that under paragraph 5 of Section 19E of Massachusetts Insurance Law, the policyholder eligible to participate in the distribution of Holding Company stock, cash or policy credits resulting from the Plan of Reorganization is ''the person whose name appears * * * on the insurer's records as owner'' of the policy. John Hancock further represents that an insurance or annuity policy that provides benefits under an employee benefit plan, typically designates the employer that sponsors the plan, or a trustee acting on behalf of the plan, as the owner of the policy. In regard to insurance or annuity policies that designate the employer or trustee as owner of the policy, John Hancock represents that it is required under the foregoing provisions of Massachusetts Insurance Law and the Plan of Reorganization to make distributions resulting from such Plan to the employer or trustee as owner of the policy, except as provided below.

Notwithstanding the foregoing, John Hancock's Plan of Reorganization provides a special rule

Eligible Policyholders who receive cash or policy credits will have an opportunity to benefit from any potential appreciation in the stock price during the initial trading period.

One or more fiduciaries of a Plan which is independent of John Hancock will receive the consideration and neither John Hancock nor any of its affiliates will exercise discretion or provide ''investment advice,'' as that term is defined in 29 CFR 2510.3–21(c) with respect to any such acquisition. Further, no Eligible Policyholder will pay brokerage commissions or fees in connection with the receipt of Holding Company stock.

11. As noted above, in the case of the John Hancock Plans, U.S. Trust will represent their interests. U.S. Trust will determine whether the Plan of Reorganization is in the best interest of such Plan and their participants and beneficiaries; vote at the special meeting of Eligible Policyholders on the proposal to approve or not to approve the Plan of Reorganization. If the vote is to approve the Plan of Reorganization, U.S. Trust will decide whether the affected John Hancock Plan should receive Holding Company stock or cash (should the latter option be available) and receives such consideration on behalf of the affected John Hancock Plan; monitor, on behalf of the affected John Hancock Plan, the acquisition and holding of the shares of any Holding Company stock received; make determinations on behalf of the John Hancock Plan with respect to voting and the continued holding of the shares of Holding Company stock received by such Plan; dispose of any Holding Company stock held by the John Hancock Plan which exceeds the limitation of section 407(a)(2) of the Act as reasonably as practicable but in no event later than six months following the effective date of the demutualization; and take all actions that are necessary and appropriate to safeguard the interests of the John Hancock Plans. Further, U.S Trust will provide the Department with a complete and detailed final report as it relates to the John Hancock Plans prior to the effective date of the demutualization. Finally, U.S. Trust states that it has conducted a preliminary review of John Hancock's Plan of Reorganization and it sees nothing in the Plan that would preclude the Department of Labor from proposing the requested exemption.

12. The Plan of Reorganization also provides for the establishment of a commission-free sales program whereby Eligible Policyholders who receive between 99 or fewer shares of Holding Company stock will be given the opportunity to sell, at prevailing market prices, all of their Holding Company stock received without the payment of any brokerage commissions. The commission-free sales program will concurrently offer Eligible Policyholders the opportunity to purchase an additional number of shares necessary to bring their respective total number of shares up to 100. Again, Eligible Policyholders will not be required to pay any brokerage commissions or similar fees to John Hancock. Moreover, John Hancock and its affiliates will not provide ''investment advice'' as described in 29 CFR 2510.3–21(c) with regard to the operation of the program. The commission-free sales program will commence on the first business day after the six month anniversary of the effective date of the reorganization and will continue for 90 days thereafter. Such program may be extended with the approval of the Commissioner if the Board of Directors of the Holding Company determines such extension would be appropriate and in the best interest of the Holding Company and its stockholders.

13. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Plan of Reorganization will be implemented in accordance with stringent procedural and substantive safeguards that are being imposed under Massachusetts law and will be subject to the review and supervision of the Commissioner.

(b) The Commissioner will review the terms of the options that are provided to Eligible Policyholders of John Hancock as part of such Commissioner's review of the Plan of Reorganization following a determination that such Plan of Reorganization is not prejudicial to all Eligible Policyholders.

(c) The Plan of Reorganization will be filed with the New York Superintendent who will determine whether the Plan of Reorganization is fair and equitable to Eligible Policyholders from New York.

(d) The Plan of Reorganization will receive the concurrence of both the Commissioner and the Superintendent before it is implemented.

(e) One or more independent Plan fiduciaries will have an opportunity to determine whether to vote to approve the terms of the Plan of Reorganization and will be solely responsible for all such decisions after receiving full and complete disclosure.

(f) The proposed exemption will allow Eligible Policyholders that are Plans to acquire Holding Company stock, cash or policy credits in exchange for their membership interests in John Hancock and neither John Hancock nor its affiliates will exercise any discretion or provide ''investment advice,'' as that term is defined in 29 CFR 2510.3–21(c) with respect to such acquisition.

(g) No Eligible Policyholder will pay any brokerage commissions or fees in connection with such Eligible Policyholder's receipt of Holding Company stock or with respect to the implementation of the commission-free sales and purchase programs.

(h) The Plan of Reorganization will not change premiums or reduce policy benefits, values, guarantees or other policy obligations of John Hancock to its policyholders and contractholders.

Notice to Interested Persons

John Hancock will provide notice of the proposed exemption to Eligible Policyholders that are Plans within 14 days of the publication of the notice of pendency in the **Federal Register**. Such notice will be provided to interested persons by first class mail and will include a copy of the notice of proposed exemption as published in the **Federal Register** as well as a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on the proposed exemption. Comments with respect to the notice of proposed exemption are due within 44 days of the publication of this pendency notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

---

applicable to an insurance policy issued to a trust established by John Hancock. This rule applies whether or not the trust, or any arrangement established by any employer participating in the trust, constitutes an employee benefit plan subject to the Act. Under this special rule, the holder of each individual ''certificate'' issued in connection with the insurance policy is treated as the policyholder and owner for all purposes under the Plan of Reorganization, including voting rights and the distribution of consideration. The trustee of any such trust established by John Hancock will not be considered a policyholder or owner and will not be eligible to vote or receive consideration.

In general, it is the Department's view that, if an insurance policy (including an annuity contract) is purchased with assets of an employee benefit plan, including participant contributions, and if there exist any participants covered under the plan (as defined at 29 CFR 2510.3–3) at the time when John Hancock incurs the obligation to distribute Holding Company stock, cash or policy credits, then such consideration would constitute an asset of such plan. Under these circumstances, the appropriate plan fiduciaries must take all necessary steps to safeguard the assets of the plan in order to avoid engaging in a violation of the fiduciary responsibility provisions of the Act.

Bankers Trust Company (BT), Located in New York, NY

[Application No. D–10756]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I.—Covered Transactions

If the exemption is granted, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The lending of securities to affiliates of BT, a wholly owned subsidiary of Deutsche Bank AG (DB), which are: (i) Either banks, supervised by the United States or by a State within the United States, or broker-dealers registered under the Securities Exchange Act of 1934 (the 1934 Act); or (ii) certain foreign affiliates (the Foreign Affiliates) of BT and DB which are broker-dealers or banks in jurisdictions specified in this proposed exemption (collectively, the Affiliated Borrowers), by employee benefit plans (the Client Plans), including commingled investment funds holding Client Plan assets, for which BT, DB, or either of their current or future affiliates or successors acts as securities lending agent (or sub-agent) (the DB Lending Agent); and (2) the receipt of compensation by the DB Lending Agent in connection with these transactions, provided the general conditions set forth below in Section II are met.

Section II.—General Conditions

(a) For each Client Plan, neither the DB Lending Agent nor an Affiliated Borrower, nor an affiliate of either, has or exercises discretionary authority or control with respect to the investment of Client Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

(b) Any arrangement for a DB Lending Agent to lend Client Plan securities to an Affiliated Borrower in either an agency or sub-agency capacity is approved in advance by a Client Plan fiduciary who is independent of the DB Lending Agent.[14] In this regard, the independent Client Plan fiduciary also approves the general terms of the securities loan agreement (the Loan Agreement) between the Client Plan and the Affiliated Borrowers, although the specific terms of the Loan Agreement are negotiated and entered into by the DB Lending Agent and the DB Lending Agent acts as a liaison between the lender and the borrower to facilitate the lending transaction.

(c) The terms of each loan of securities by a Client Plan to the Affiliated Borrowers is at least as favorable to such Client Plans as those of a comparable arm's length transaction between unrelated parties.

(d) A Client Plan may terminate the agency or sub-agency arrangement at any time without penalty to such Client Plan on five business days notice, whereupon the Affiliated Borrowers will deliver securities identical to the borrowed securities (or the equivalent in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Client Plan within: (1) The customary delivery period for such securities; (2) five business days; or (3) the time negotiated for such delivery of by the Client Plan and the Affiliated Borrowers, whichever is less.

(e) The Client Plan receives from the Affiliated Borrower (either by physical delivery or by book entry in a securities depository located in the United States, wire transfer or similar means) by the close of business on or before the day the loaned securities are delivered to the Affiliated Borrower, collateral consisting of cash, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, or irrevocable United States bank letters of credit issued by a person other than the DB Lending Agent or an affiliate thereof, or any combination thereof, or other collateral permitted under PTE 81–6, as it may be amended or superseded.

(f) As of the close of business on the preceding business day, the fair market value of the collateral initially equals at least 102 percent of the market value of the loaned securities and, if the market value of the collateral falls below 100 percent, the applicable Affiliated Borrower delivers additional collateral on the following day such that the market value of the collateral again at least equal to 102 percent.

(g) Prior to entering into the lending program, the Affiliated Borrower furnishes the DB Lending Agent its most recently available audited and unaudited statements, which are, in turn, provided to a Client Plan, as well as a representation by such Affiliated Borrower, that as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently-furnished statement that has been disclosed to such Client Plan; provided, however, that in the event of a material adverse change, the DB Lending Agent does not make any further loans to such Affiliated Borrower unless an independent fiduciary of the Client Plan is provided notice of any material adverse change and approves the loan in view of the changed financial condition.

(h) In return for lending securities, the Client Plan either —

(1) Receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan; or

(2) Has the opportunity to derive compensation through the investment of cash collateral. (Under such circumstances, the Client Plan may pay a loan rebate or similar fee to an Affiliated Borrower, if such fee is not greater than the fee the Client Plan would pay in a comparable arm's length transaction with an unrelated party.)

(i) All procedures regarding the securities lending activities conform to the applicable provisions of PTE 81–6 and PTE 82–63 as such class exemptions may be amended or superseded as well as to applicable securities laws of the United States or the jurisdiction in which the Foreign Affiliate is domiciled, as appropriate.

(j) The DB Lending Agent or an affiliate which is domiciled in the United States will indemnify and hold harmless each lending Client Plan in the United States against any shortfall in the collateral, as set forth in the applicable lending agreement (the Loan Agreement), plus interest and any transaction costs incurred (including attorney's fees of the Client Plan arising out of the default on the loans or the failure to indemnify properly under this provision) which the Client Plan may incur or suffer directly arising out of the lending of securities of such Client Plan to such Affiliated Borrower, to the extent permitted by law.[15] In the event that an Affiliated Borrower defaults on a loan, the DB Lending Agent will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to

[14] The Department, herein, is not providing exemptive relief for securities lending transactions engaged in by primary lending agents, other than the DB Lending Agent, beyond that provided pursuant to Prohibited Transaction Exemption (PTE) 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) and PTE 82–63 (47 FR 14804, April 6, 1982).

[15] Where the law prohibits such indemnification by the DB Lending Agent, the Affiliated Borrower will provide the identical indemnification.

accomplish such purchase, the DB Lending Agent or the applicable affiliate will indemnify the Client Plan for any shortfall in the collateral, as set forth in the Loan Agreement, plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan arising out of the default on the loans or the failure to indemnify properly under this provision). Alternatively, if such identical securities are not available on the market, the DB Lending Agent or the applicable affiliate will pay the Client Plan cash equal to: (1) The market value of the borrowed securities as of the date they should have been returned to the Client Plan, plus (2) all the accrued financial benefits derived from the beneficial ownership of such loaned securities as of such date, plus (3) interest from such date to the date of payment.

(k) The Client Plan receives the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities, or other distributions.

(l) The DB Lending Agent provides to Client Plans, prior to any Client Plan's approval of the lending of its securities to an Affiliated Borrower, copies of the notice of proposed exemption (the Notice) and the final exemption.

(m) Each Client Plan receives monthly reports with respect to its securities lending transactions, including, but not limited to, the information described in Representation 31 of the Notice, so that an independent fiduciary of the Client Plan may monitor such transactions with Affiliated Borrowers.

(n) Only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to Affiliated Borrowers; provided, however, that—

(1) In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Client Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are ''plan assets'' under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with a DB Lending Agent, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are ''plan assets'' under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with a DB Lending Agent, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Client Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Has full investment responsibility with respect to plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

In addition, none of the entities described above are formed for the sole purpose of making loans of securities.

(o) With respect to each successive two-week period, on average, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans will be to unrelated borrowers.

(p) In addition to the above, all loans involving a Foreign Affiliate have the following supplemental requirements:

(1) As applicable, such Foreign Affiliate is registered as a broker-dealer or bank with—

(i) The Securities and Futures Authority (the SFA) or the Financial Services Authority (the FSA) in the United Kingdom;

(ii) The Deutsche Bundesbank and/or the Federal Banking Supervisory Authority, *i.e.*, der Bundesaufsichsamt fuer das Kreditwesen (the BAK) or the Bundesaufsichtsamt fur den Wertpapierhandel (the BAWe) in Germany;

(iii) The Ministry of Finance (the MOF) and/or the Tokyo Stock Exchange in Japan;

(iv) The Ontario Securities Commission (the OSC) and/or the Investment Dealers Association (the IDA), or the Office of the Superintendent of Financial Institutions (the OSFI) in Canada;

(v) The Swiss Federal Banking Commission in Switzerland; and

(vi) The Australian Prudential Regulation Authority (APRA) or the Australian Securities and Investments Commission (ASIC), and/or the Australian Stock Exchange Limited (ASEL) in Australia.

(2) Such broker-dealer or bank is in compliance with all applicable provisions of Rule 15a–6 (17 CFR 240.15a–6) under the 1934 Act which provides for foreign broker-dealers a limited exemption from United States registration requirements;

(3) All collateral is maintained in United States dollars or dollar-denominated securities or letters of credit (unless an applicable exemption provides otherwise);

(4) All collateral is held in the United States (unless an applicable exemption provides otherwise) and the situs of the securities Loan Agreements are maintained in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1; and

(5) Each Foreign Affiliate provides the DB Lending Agent a written consent to service of process in the United States and to the jurisdiction of the courts of the United States for any civil action or proceeding brought in respect of the securities lending transaction, which consent provides that process may be served on such borrower by service on the DB Lending Agent.

(q) The DB Lending Agent and its affiliates maintain, or cause to be maintained within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (r)(1) to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the DB Lending Agent and/or its affiliates, the records are lost or

destroyed prior to the end of the six year period; and

(2) No party in interest other than the DB Lending Agent and/or its affiliates shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (r)(1).

(r)(1) Except as provided in subparagraph (r)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (q) are unconditionally available at their customary location during normal business hours by:

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission (the SEC);

(ii) Any fiduciary of a participating Client Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to any participating Client Plan or any duly authorized employee representative of such employer; and (iv) Any participant or beneficiary of any participating Client Plan, or any duly authorized representative of such participant or beneficiary.

(r)(2) None of the persons described above in paragraphs (r)(1)(ii)–(r)(1)(iv) of this paragraph (r)(1) are authorized to examine the trade secrets of the DB Lending Agent or commercial or financial information which is privileged or confidential.

III—Definitions

For purposes of this proposed exemption,

(a) The term ''affiliate'' means any entity now or in the future, directly or indirectly controlling, controlled by or under common control with BT, DB or their successors.

(b) The term ''Affiliated Borrower'' means an affiliate of BT or DB that is a bank, as defined in section 202(a)(2) of the Investment Advisers Act of 1940 (the Advisers Act), that is supervised by the United States or a State, or a broker-dealer registered under the 1934 Act, or any Foreign Affiliate.

(c) The term ''Foreign Affiliate'' means an affiliate of BT or DB that is a broker-dealer or bank that is supervised by: (1) The SFA or the FSA in the United Kingdom; (2) the Deutsche Bundesbank and/or the BAK, or the BAWe in Germany; (3) the MOF and/or the Tokyo Stock Exchange in Japan; (4) the OSC, the IDA, and/or OSFI in Canada; (5) the Swiss Federal Banking Commission in Switzerland; and (6) APRA, ASIC, and/or ASEL in Australia.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of April 9, 1999.

Summary of Facts and Representations

1. BT (also referred to herein as ''the Applicant'') is a New York banking corporation and a leading commercial bank, whose parent, Bankers Trust Corporation, is wholly owned by DB, a banking corporation organized under the laws of the Federal Republic of Germany and the largest banking institution in the world, based on assets.

2. The Applicant provides a wide variety of banking, fiduciary, recordkeeping, custodial, brokerage and investment services to corporations, institutions, governments, employee benefit plans, governmental retirement plans and private investors. Its affiliates actively engage in the borrowing of securities. All borrowings by U.S. broker-dealer affiliates from pension plans conform to the Federal Reserve Board's Regulation T. Since its merger with DB, the Applicant has Foreign Affiliates worldwide that are engaged in the business of trading securities. Among the Applicant's current affiliated banks and broker-dealers are Foreign Affiliates based in—

(a) *The United Kingdom (Affiliated Borrower/U.K.)*, which includes, but is not be limited to, Bankers Trust International PLC and the London Branch of Deutsche Bank;

(b) *Japan (Affiliated Borrower/Japan)*, which includes, but is not be limited to, Japan Bankers Trust Ltd. and the Tokyo Branch of Deutsche Bank;

(c) *Germany (Affiliated Borrower/Germany)*, which includes, but is not limited to, Deutsche Bank;

(d) *Australia (Affiliated Borrower/Australia)*, which includes, but is not limited to, BT Australia Limited and the Sydney Branch of Deutsche Bank;

(e) *Canada (Affiliated Borrower/Canada)*, which includes, but is not limited to, Deutsche Bank Canada and Deutsche Bank Securities Limited; and

(f) *Switzerland (Affiliated Borrower/Switzerland)*, which includes, but is not limited to, Deutsche Bank (Suisse) S.A.

3. The Applicant and its affiliates actively engage in the borrowing and lending of securities, with daily outstanding loan volume averaging billions of dollars. The Affiliated Borrowers utilize borrowed securities to satisfy their trading requirements or to re-lend to other broker-dealers and others who need a particular security for various periods of time.

4. The Applicant's U.S. affiliates are either U.S. registered broker-dealers or banks supervised by the U.S. or a State. Affiliated Borrower/U.K. is either authorized to conduct an investment business in and from the United Kingdom as a broker-dealer regulated by the SFA or as a deposit-taking institution or merchant bank regulated by the FSA. Affiliated Borrower/Japan is authorized to conduct an investment business in Japan as a broker-dealer or bank regulated by the MOF and/or the Tokyo Stock Exchange. Affiliated Borrower/Switzerland is authorized to conduct an investment business as a broker-dealer or bank in Switzerland by the Swiss Federal Banking Commission. Affiliated Borrower/Germany is authorized to conduct business in Germany as a bank or broker-dealer by the Deutsche Bundesbank and/or the BAK, or the BAWe.[16] Affiliated Borrower/Australia is either authorized to conduct an investment business in Australia as a bank or broker-dealer by the APRA, the ASIC and/or the Australian Stock Exchange Limited. Affiliated Borrower/Canada is authorized to conduct an investment business in Canada as a bank or broker-dealer by the OSC and/or the IDA or the OSFI.

5. Although not registered with the United States SEC as broker-dealers, the Foreign Affiliates that are broker-dealers are subject to the rules, regulations and membership requirements of their respective governmental regulators and/or the self-regulatory organizations listed above, relating to minimum capitalization, reporting requirements, periodic examinations, client money and safe custody rules and books and records requirements with respect to client accounts. These rules and regulations share a common objective: the protection of the investor by the regulation of the securities industry. While these rules and regulations vary from country to country, they require each firm which employs registered representatives or registered traders to have a tangible net worth and be able to meet their obligations as they may fall

[16] The BAWe is a German federal agency that enforces German securities laws. Each German state has a state government agency which regulates broker-dealers operating in that state. All broker-dealers report directly to the appropriate state agency by filing, within four months after the end of the fiscal year, audited financial statements supplemented by quarterly earnings reports. In addition, each German stock exchange admits broker-dealers to membership and may revoke such membership. The stock exchanges limit broker-dealer member transactions based on core capital or the equivalent thereof, and additional security provided, based on their exposure to risk from transactions on the exchange. Any change in core capital having the effect of reducing the transaction limit must be reported to the stock exchange immediately.

due. In addition, these rules and regulations set forth comprehensive financial resource and reporting/disclosure rules regarding capital adequacy. Further, to demonstrate capital adequacy, the rules may impose reporting/disclosure requirements on broker-dealers with respect to risk management, internal controls, and transaction reporting and recordkeeping requirements to the effect that required records must be produced at the request of the respective regulators at any time. Finally, these rules and regulations impose potential fines and penalties on broker-dealers which establish a comprehensive disciplinary system.

6. Similarly, the banks comprising the Foreign Affiliates are subject to rules and regulations of their respective governmental regulators. For example, Affiliated Borrower/U.K. banks are subject to regulation in the United Kingdom by the FSA, the successor to the Bank of England. The FSA issues licenses to banks in the United Kingdom, issues directives to address violations by or irregularities involving banks, requires information from a bank or its auditors regarding supervisory matters and revokes bank licenses. In addition, the FSA has established procedures for monitoring the activities of the DB Lending Agent and its affiliates in the United Kingdom through various regulatory standards. Among those standards are requirements for adequate internal controls, oversight and administration. On a recurring basis, the DB Lending Agent and its affiliates will be required to provide the FSA with information regarding its activities in the United Kingdom, profit and loss, balance sheet, large exposures, foreign exchange exposures and country risk exposures. The Board of Directors of the Federal Reserve System in the United States or the BAK in Germany supervises the DB Lending Agent and its affiliates with respect to capital adequacy.

In addition, the APRA, which has taken over the bank supervisory duties of the Reserve Bank of Australia, licenses and regulates Affiliated Borrower/Australia locally-incorporated banks. The APRA has the power to issue and revoke bank licenses. In addition, the APRA may issue directives to address violations by or irregularities involving banks and it requires information from a bank or its auditors regarding supervisory matters. The APRA has established procedures for monitoring the activities of Affiliated Borrower/Australia banks in Australia through various statutory and regulatory standards. Among those standards are requirements for capital adequacy, internal controls, oversight and administration. On a recurring basis, Affiliated Borrower/Australia banks that are locally-incorporated will be required to provide the APRA with information regarding its activities in Australia, profit and loss, balance sheets and large exposures.

The APRA's licensing and supervision of Affiliated Borrower/Australia foreign bank branches is similar to that of locally-incorporated banks. While the APRA monitors credit risk concentrations of foreign bank branches, endowed capital in Australia and capital-based large risk exposure limits are the responsibility of the home supervisor which is either the Board of Governors of the Federal Reserve System in the United States or the BAK in Germany.

Further, banks comprising Affiliated Borrower/Canada are subject to the rules of the OSFI, an entity that licenses and regulates Affiliated Borrower/Canada banks established in Canada as deposit-taking subsidiaries. The OSFI licenses banks, issues directives to address violations by or irregularities involving the bank, requires information from the bank or its auditors regarding supervisory matters and revokes bank licenses.

In addition, the OSFI has established procedures for monitoring the activities of Affiliated Borrower/Canada banks in Canada through various statutory and regulatory standards. Among those standards are requirements for capital adequacy, adequate internal controls, oversight and administration. On a recurring basis, Affiliated Borrower/Canada banks will be required to provide the OSFI with information regarding its activities in Canada, profit and loss, balance sheet, large exposures and foreign exchange exposures.

Where a foreign bank establishes a branch in Canada, the Minister of Finance authorizes the establishment of the branch and the OSFI licenses the bank branch to carry on business and may revoke the license. The bank branch must have a minimum amount of unencumbered assets in Canada equal to a percentage of branch liabilities and must satisfy capital adequacy rules. Branches accepting deposits are subject to a yearly audit by an external auditor and examination by the OSFI.[17]

7. Aside from the protections afforded by the regulators in each foreign jurisdiction, the Applicant represents that the Foreign Affiliates will comply with all applicable provisions of Rule 15a–6 of the 1934 Act. Rule 15a–6 provides foreign broker-dealers with a limited exemption from SEC registration requirements and, as described below, offers additional protections. Specifically, Paragraph (a)(4)(i) of Rule 15a–6 provides an exemption from U.S. broker-dealer registration for a foreign broker-dealer that effects transactions in securities with or for, or induces or attempts to induce the purchase or sale of any security by ''a registered broker or dealer, whether the registered broker or dealer is acting as principal for its own account or as agent for others, or a bank acting in a broker-dealer capacity as permitted by U.S. law.'' [18] In engaging in borrowing activities, each Foreign Affiliate, relying on the Paragraph (a)(4)(i) exemption will be interacting solely with the Applicant, each of which is such a ''registered broker or dealer'' or ''bank,'' and will not be interacting with the Applicant's underlying Client Plans.

Paragraph (a)(3) of Rule 15a–6 provides an exemption from U.S. broker-dealer registration for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter-equity and debt options) by a ''U.S. institutional investor'' or a ''major U.S. institutional investor,'' provided that the foreign broker-dealer, among other things, enters into these transactions through a U.S. registered broker-dealer intermediary. The term ''U.S.

[17] For a description of the Bundesbank and BAK regime of regulation applicable to banks comprising Affiliated Borrower/Germany, refer to Representation 2 of the Summary of Facts and Representations in the Notice (63 FR 53703, 53706, October 6, 1998) for Salomon Smith Barney, Inc. Similarly, for descriptions of the Swiss Federal Banking Commission and the MOF, which regulate both banks and broker-dealers comprising Affiliated Borrower/Switzerland and Affiliated Borrower/Japan, respectively, see Representations 3 and 4 of the Notice for the Union Bank of Switzerland and UBS Securities, LLC (63 FR 15452, 15455, March 31, 1998).

[18] Section 3(a)(4) of the 1934 Act defines ''broker'' to mean ''any person engaged in the business of effecting transactions in securities for the account of others, but it does not include a bank. Section 3(a)(5) of the 1934 Act provides a similar exclusion for ''banks'' in the definition of the term ''dealer.'' However, section 3(a)(6) of the 1934 Act defines ''bank'' to mean a banking institution organized under the laws of the United States or a State of the United States. Further, Rule 15a–6(b)(3) provides that the term ''foreign broker or dealer'' means ''any non-U.S. resident person * * * whose securities activities, if conducted in the United States, would be described by the definition of ''broker'' or ''dealer'' in sections 3(a)(4) or 3(a)(5) of the [1934] Act.'' Therefore, the test of whether an entity is a ''foreign broker'' or ''dealer'' is based on the nature of such foreign entity's activities and, with certain exceptions, only banks that are regulated by either the United States or a State of the United States are excluded from the definition of the term ''broker'' or ''dealer.'' Thus, for purposes of this exemption request, the Applicant is willing to represent that its Foreign Affiliates will comply with the applicable provisions and relevant SEC interpretations and amendments of Rule 15a–6.

institutional investor,'' as defined in Rule 15a–6(b)(7), includes an employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 (the Act) if (a) the investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association, insurance company or registered investment adviser, or (b) the employee benefit plan has total assets in excess of $5 million, or (c) the employee benefit plan is a self-directed plan with investment decisions made solely by persons that are ''accredited investors'' as defined in Rule 501(a)(1) of Regulation D of the Securities Exchange Act of 1933, as amended.[19] The term ''major U.S. major institutional investor'' is defined in Rule 15a-6(b)(4) as a person that is a U.S. institutional investor that has total assets in excess of $100 million or an investment adviser registered under Section 203 of the Advisers Act that has total assets under management in excess of $100 million.[20]

8. The Applicant represents that under Rule 15a–6, a foreign broker-dealer that, in reliance on the Paragraph (a)(3) exemption, induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major U.S. institutional investor must, among other things—

(a) Consent to service of process for any civil action brought by, or proceeding before, the SEC or any self-regulatory organization;

(b) Provide the SEC (upon request or pursuant to agreements reached between any foreign securities authority, including any foreign government, and the SEC or the U.S. Government) with any information or documents within the possession, custody or control of the foreign broker-dealer, any testimony of any such foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the SEC requests and that relates to transactions effected pursuant to the Rule;

(c) Rely on the U.S. registered broker-dealer through which the transactions with the U.S. institutional and major U.S. institutional investors are effected to (among other things):

(1) Effect the transactions, other than negotiating their terms;

(2) Issue all required confirmations and statements;

(3) As between the foreign broker-dealer and the U.S. registered broker-dealer, extend or arrange for the extension of credit in connection with the transactions;

(4) Maintain required books and records relating to the transactions, including those required by Rules 17a–3 (Records to be Made by Certain Exchange Members) and 17a–4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act;

(5) Receive, deliver and safeguard funds and securities in connection with the transactions on behalf of the U.S. institutional investor or major U.S. institutional investor in compliance with Rule 15c3–3 of the 1934 Act (Customer Protection—Reserves and Custody of Securities);[21] and

(6) Participate in certain oral communications (*e.g.,* telephone calls) between the foreign associated person and the U.S. institutional investor (not the major U.S. institutional investor), and accompany the foreign associated person on certain visits with both U.S. institutional and major institutional investors.[22]

9. As the DB Lending Agent, the Applicant provides securities lending services on an agency basis to institutional clients. The DB Lending Agent, pursuant to authorization from its client, will negotiate the terms of loans with borrowers pursuant to a client-approved form of Loan Agreement and will act as a liaison between the lender (*i.e.,* the Client Plan and its custodian) and the borrower to facilitate the lending transaction. No loans of futures contracts will be involved. The DB Lending Agent will have responsibility for monitoring receipt of all required collateral and marking such collateral to market daily so that adequate levels of collateral are maintained. The DB Lending Agent also will monitor and evaluate on a continuing basis the performance and creditworthiness of the borrowers. The DB Lending Agent may or may not act as a custodian or directed trustee with respect to the client's portfolio of securities being loaned. The DB Lending Agent may be authorized, from time to time, by a Client Plan to receive and hold pledged collateral and invest cash collateral pursuant to guidelines established by such Client Plan. All of the DB Lending Agent's procedures for lending securities will be designed to comply with the applicable conditions of PTE 81–6 and PTE 82–63 (as such PTEs may be amended or superseded).[23]

10. The DB Lending Agent may be retained occasionally by other primary securities lending agents to provide securities lending services in a sub-agent capacity with respect to portfolio securities of clients of such primary lending agents. As securities lending sub-agent, the DB Lending Agent's role under the lending transactions (*i.e.,* negotiating the terms of loans with borrowers pursuant to a client-approved form of Loan Agreement and monitoring receipt of, and marking to market, required collateral) parallels those under lending transactions for which the DB Lending Agent acts as primary lending agent on behalf of its clients.[24]

11. When a loan is collateralized with cash, the cash will be invested for the benefit and at the risk of the Client Plan, and resulting earnings (net of a rebate to the borrower) comprise the compensation to the Client Plan in respect of such loan, which is split between the Client Plan and the securities lending agent. Where collateral consists of obligations other than cash, the borrower pays a fee (loan premium), which is split between the Client Plan and the securities lending agent.

12. Accordingly, the Applicant requests an administrative exemption from the Department with respect to: (a) The lending of securities owned by certain Client Plans for which the DB Lending Agent will serve as securities lending agent or sub-agent to its Affiliated Borrowers (both current and future)[25] following disclosure of their affiliation with the DB Lending Agent; and (b) the receipt of compensation by the DB Lending Agent in connection

[19] To the extent permitted by applicable U.S. securities law, the Foreign Affiliates may rely on a U.S. bank or trust company to perform this role.

[20] See also SEC No-Action Letter issued to Cleary, Gottlieb, Steen & Hamilton on April 9, 1997 (hereinafter, the April 9, No-Action Letter), expanding the definition of the term ''major U.S. institutional investor.''

[21] Under certain circumstances described in the April 9, 1997 No-Action Letter (*e.g.,* clearance and settlement transactions), there may be direct transfers of funds and securities between the Client Plan and an Affiliated Borrower. The Applicant notes that in such situations, the U.S. registered broker-dealer will not be acting as a principal with respect to any duties it is required to undertake pursuant to Rule 15a–6.

[22] Under certain circumstances, the foreign associated person may have direct communications and contact with the U.S. institutional investor. See April 9 SEC No-Action Letter.

[23] PTE 81–6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to certain broker-dealers or banks which are parties in interest. PTE 82–63 provides an exemption under specified conditions from section 406(b)(1) of the Act and section 4975(c)(1)(E) of the Code for the payment of compensation to a plan fiduciary for services rendered in connection with loans of plan assets that are securities.

[24] As noted previously, the Department is not providing exemptive relief herein for securities lending transactions that are engaged in by primary lending agents, other than the DB Lending Agent and its affiliates, beyond that provided by PTEs 81–6 and 82–63.

[25] For the sake of simplicity, future references to the DB Lending Agent's performance of services as securities lending agent should be deemed to include its parallel performance as securities lending sub-agent and references to Client Plans should be deemed to refer to Plans for which the DB Lending Agent is acting as sub-agent with respect to securities lending activities, unless otherwise indicated specifically or by the context of the reference.

with such transactions. For each Client Plan, neither the DB Lending Agent nor any affiliate will have discretionary authority or control or render investment advice over Client Plans' decisions concerning the acquisition or disposition of securities available for loan. The DB Lending Agent's discretion will be limited to activities such as negotiating the terms of the securities loans with the Affiliated Borrowers and (to the extent granted by the Client Plan fiduciary) investing any cash collateral received in respect of the loans. Because, under the proposed arrangement, the DB Lending Agent would have discretion to lend Client Plan securities to an Affiliated Borrower, and because the Affiliated Borrower is an affiliate of the DB Lending Agent, the lending of securities to Affiliated Borrowers by a Client Plan for which the DB Lending Agent serves as securities lending agent (or sub-agent) may be outside the scope of relief provided by PTE 81–6 and PTE 82–63. Moreover, loans to the Foreign Affiliates would be outside of the relief granted in PTE 81–6 (because it limits its relief to banks and U.S. registered broker-dealers). Therefore, several safeguards, described more fully below, are incorporated in the application in order to ensure the protection of the Client Plan assets involved in the transactions. In addition, the proposed lending program will incorporate the conditions contained in PTE 81–6 and PTE 82–63 and will be in compliance with all securities laws of the United States, to the extent applicable.

13. Where a DB Lending Agent is the direct securities lending agent, a fiduciary of a Client Plan which is independent of the DB Lending Agent will sign a securities lending agency agreement with the DB Lending Agent (the Agency Agreement) before the Client Plan participates in a securities lending program. The Agency Agreement and the explanatory material accompanying such agreement will, among other things, describe the operation of the lending program, prescribe the form of securities Loan Agreement to be entered into on behalf of the Client Plan with borrowers, specify the securities which are available to be lent, required margin and daily marking-to-market, and provide a list of permissible borrowers, including the Affiliated Borrowers. The Agency Agreement will also set forth the basis and rate for the DB Lending Agent's compensation from the Client Plan for the performance of securities lending services.

14. The Agency Agreement will contain provisions to the effect that if the Affiliated Borrowers are designated by the Client Plan as approved borrowers: (a) The Client Plan will acknowledge that the Affiliated Borrowers are affiliates of the DB Lending Agent; and (b) the DB Lending Agent will represent to the Client Plan that each and every loan made to the Affiliated Borrowers on behalf of the Client Plan will be at market rates which are no less favorable to the Client Plan than a loan of such securities, made at the same time and under the same circumstances, to an unaffiliated borrower.

15. When the DB Lending Agent is lending securities under a sub-agency arrangement, the primary lending agent will enter into a securities lending agency agreement (the Primary Lending Agreement) with a fiduciary of a Client Plan who is independent of such primary lending agent, the DB Lending Agent or an Affiliated Borrower, before the Client Plan participates in the securities lending program. The primary lending agent will be unaffiliated with the DB Lending Agent or its affiliates. The DB Lending Agent will not enter into a sub-agent arrangement unless the Primary Lending Agreement contains substantive provisions akin to those in the Agency Agreement relating to the description of the operation of the lending program, use of an approved form of Loan Agreement, specification of securities which are available to be lent, required margin and daily marking-to-market, and provision of a list of approved borrowers (which will include Affiliated Borrowers). The Primary Lending Agreement will specifically authorize the primary lending agent to appoint sub-agents, to facilitate its performance of securities lending agency functions. Where the DB Lending Agent is to act as such a sub-agent, the Primary Lending Agreement will expressly disclose that the DB Lending Agent is to so act. The Primary Lending Agreement will also set forth the basis and rate for the primary lending agent's compensation from the Client Plan for the performance of securities lending services and will authorize the primary lending agent to pay a portion of its fee, as the primary lending agent determines in its sole discretion, to any sub-agent(s) it retains pursuant to the authority granted under such agreement.

Pursuant to its authority to appoint sub-agents, the primary lending agent will enter into a securities lending sub-agency agreement (the Sub-Agency Agreement) with the DB Lending Agent under which the primary lending agent will retain and authorize the DB Lending Agent as sub-agent, to lend securities of the primary lending agent's Client Plans, subject to the same terms and conditions as are specified in the Primary Lending Agreement. Thus, for example, the form of Loan Agreement will be the same as that approved by the Client Plan fiduciary in the Primary Lending Agreement and the list of permissible borrowers under the Sub-Agency Agreement (which will include the Affiliated Borrowers) will be limited to those approved borrowers listed as such under the Primary Lending Agreement.

The Applicant states that the Sub-Agency Agreement will contain provisions which are in substance comparable to those described above, which would appear in an Agency Agreement in situations where the DB Lending Agent is the primary lending agent. In this regard, the DB Lending Agent will make the same representation in the Sub-Agency Agreement as described above in Representation 14 with respect to arm's length dealings with the Affiliated Borrowers. The Sub-Agency Agreement will also set forth the basis and rate for the DB Lending Agent's compensation to be paid by the primary lending agent.[26]

16. In all cases, the DB Lending Agent will maintain transactional and market records sufficient to assure compliance with its representation that all loans to the Affiliated Borrowers are effectively at arm's length terms. Such records will be provided to the appropriate Client Plan fiduciary in the manner and format agreed to with the such Client Plan fiduciary, without charge to the Client Plan. A Client Plan may terminate the Agency Agreement (or the Primary Lending Agreement) at any time, without penalty to the Client Plan, on five business days notice. In addition, the DB Lending Agent will make and retain for six months, tape recordings evidencing all securities loan transactions with Affiliated Borrowers.

17. The DB Lending Agent will negotiate the Loan Agreement with the Affiliated Borrowers on behalf of Client Plans as it does with all other borrowers. An independent fiduciary of the Client Plan will approve the terms of the Loan Agreement. The Loan Agreement will specify, among other things, the right of the Client Plan to terminate a loan at any time and the Plan's rights in the event of any default by an Affiliated Borrower. The Loan Agreement will explain the basis for

[26] The agreement setting forth the respective rights and obligations of the parties in a sub-agency arrangement may be a tripartite agreement among the Primary Lending Agent, the Client Plan and the DB Lending Agent.

compensation to the Client Plan for lending securities to the Affiliated Borrowers under each category of collateral. The Loan Agreement also will contain a requirement that the Affiliated Borrowers must pay all transfer fees and transfer taxes related to the security loans.

18. Before authorizing the program permitting loans to Affiliated Borrowers, a Client Plan will be furnished, upon request, the most recently available audited and unaudited financial statements of the Affiliated Borrowers. The Loan Agreement will contain a requirement that the Affiliated Borrower must give prompt notice at the time of a loan of any material adverse changes in its financial condition since the date of the most recently furnished financial statements.[27] If any such changes have taken place, the DB Lending Agent will not make any further loans unless an independent fiduciary of the Client Plan has approved the loan in view of the changed financial condition. Conversely, if the Affiliated Borrower fails to provide notice of such a change in its financial condition, such failure will trigger an event of default under the Loan Agreement.

19. As noted above, the agreement by the DB Lending Agent to provide securities lending services, as agent, to a Client Plan will be embodied in the Agency Agreement. The Client Plan and the DB Lending Agent will agree to the arrangement under which the DB Lending Agent will be compensated for its services as lending agent, including services as custodian, where applicable, and manager of the cash collateral received, where applicable, prior to the commencement of any lending activity. The securities lending fee arrangement will be set forth in the Agency Agreement and thereby will be subject to the prior written approval of a fiduciary of the Client Plan who is independent of the DB Lending Agent. Similarly, with respect to arrangements under which the DB Lending Agent is acting as securities lending sub-agent, the agreed upon fee arrangement of the primary lending agent will be set forth in the Primary Lending Agreement or the tripartite agreement, and such agreement will specifically authorize the primary lending agent to pay a portion of such fee, as the primary lending agent and sub-agent may agree, to any sub-agent, including the DB Lending Agent, which is to provide securities lending services to the Client Plan.[28] The Client Plan will be provided with any reasonably available information which is necessary for the Client Plan fiduciary to make a determination whether to enter into or continue to participate under the Agency Agreement (or the Primary Lending Agreement or the tripartite agreement) and any other reasonably available information which the Client Plan fiduciary may reasonably request.

20. Each time a Client Plan lends securities to an Affiliated Borrower pursuant to the Loan Agreement, the DB Lending Agent will reflect in its records the material terms of the loan, including the securities to be loaned, the required level of collateral, and the fee or rebate payable. The terms of the fee or rebate payable for each loan will be at least as favorable to the Client Plan as those of a comparable arm's length transaction between unrelated parties.

21. The Client Plan will be entitled to the equivalent of all interest, dividends and distributions on the loaned securities during the loan period. The Loan Agreement will provide that the Client Plan may terminate any loan at any time without penalty to such Client Plan. Upon a termination, the Affiliated Borrower will be contractually obligated to return the loaned securities to the Client Plan within five business days of notification (or such longer period of time permitted pursuant to a class exemption). If the Affiliated Borrower fails to return the securities within the designated time, the Client Plan will have the right under the Loan Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price and any other expenses of the Client Plan associated with the sale and/or purchase.

22. The DB Lending Agent will establish each day a written schedule of lending fees[29] and rebate rates[30] in order to assure uniformity of treatment among borrowing brokers and to limit the discretion the DB Lending Agent would have in negotiating securities loans to the Affiliated Borrowers. Loans to all borrowers of a given security on that day will be made at rates or lending fees on the relevant daily schedules or at rates or lending fees which may be more advantageous to the Client Plans. It is represented that in no case will loans be made to Affiliated Borrowers at rates or lending fees that are less advantageous to the Client Plans than those on the schedule. The daily schedule of rebate rates will be based on the current value of the Client Plan's reinvestment vehicles and on market conditions, as reflected by demand for securities by borrowers other than the Affiliated Borrowers. As with rebate rates, the daily schedule of lending fees will also be based on market conditions, as reflected by demand for securities by borrowers other than the Affiliated Borrowers, and will generally track the rebate rates with respect to the same security or class of security.

23. The rebate rates (in respect of cash-collateralized loans made by Client Plans) which are established will also take into account the potential demand for loaned securities, the applicable benchmark cost of funds indices (typically, Federal Funds, overnight repo rate or the like) and anticipated investment return on overnight investments which are permitted by the relevant Client Plan fiduciary. Further, the lending fees (in respect of loans made by Client Plans collateralized by other than cash) which are established

[27] Like broker-dealers registered with the SEC, the Foreign Affiliates are subject to capital adequacy provisions of their respective regulatory entities. It is represented that such rules require the Foreign Affiliates to maintain, at all times, financial resources in excess of its financial resources requirement (the Financial Resources Requirement). For this purpose, financial resources include equity capital, approved subordinated debt and retained earnings, less deductions for illiquid assets. The Financial Resources Requirement includes capital requirements for market risk, credit risk, foreign exchange risk and large exposures. These regulatory authority rules require that if a firm's financial resources fall below a certain percentage, the regulatory authority must be notified so that it can examine the terms of the firm's financial position and require an infusion of more capital, if needed. In addition, a breach of the requirement to maintain financial resources in excess of the Financial Resources Requirement may lead to sanctions. If the breach is not promptly resolved, the firm's activities may be restricted.

[28] The foregoing provisions describe arrangements comparable to conditions (c) and (d) of PTE 82–63 which require that the payment of compensation to a ''lending fiduciary'' is made under a written instrument and is subject to prior written authorization of an independent authorizing fiduciary. In the event that a commingled investment fund will participate in the securities lending program, the special rule applicable to such funds concerning the authorization of the compensation arrangement set forth in condition (f) of PTE 82–63 will be satisfied.

[29] The DB Lending Agent will adopt minimum daily lending fees for non-cash collateral payable by the Affiliated Borrowers to the DB Lending Agent on behalf of a Client Plan. The DB Lending Agent will submit the method for determining such minimum daily lending fees to an independent fiduciary of the Client Plan for approval before initially lending any securities to the Affiliated Borrower on behalf of such Client Plan.

[30] The DB Lending Agent will adopt separate maximum daily rebate rates with respect to securities loans collateralized with cash collateral. Such rebate rates will be based upon an objective methodology which takes into account several factors, including potential demand for loaned securities, the applicable benchmark cost of fund indices, and anticipated investment return on overnight investments permitted by the Client Plan's independent fiduciary. The DB Lending Agent will submit the method for determining such maximum daily rebate rates to such fiduciary before initially lending any securities to an Affiliated Borrower on behalf of the Client Plan.

will be set daily to reflect conditions as influenced by potential market demand.

24. The DB Lending Agent will negotiate rebate rates for cash collateral payable to each borrower, including the Affiliated Borrowers, on behalf of a Client Plan. With respect to each designated class of securities, the maximum daily rebate rate will generally be the lower of (a) the overnight repo rate or Federal Funds rate, minus a stated percentage, and (b) the actual investment rate for the cash collateral, minus a stated percentage. Where cash collateral is derived from a loan with an expected maturity date (term loan) and is intended to be invested in instruments with similar maturities, the maximum rebate fee will be less than the expected investment return (assuming no investment default). With respect to any loan to an Affiliated Borrower, the DB Lending Agent will not negotiate a rebate rate with respect to such loan which would be expected, at the time of the loan, to produce a zero or negative return to the Client Plan (assuming no default on the investments related to the cash collateral from such loan). The Applicant represents that the written rebate rate established daily for cash collateral under loans negotiated with the Affiliated Borrower will not exceed the rebate rate which would be paid to a similarly situated unrelated borrower with respect to a comparable securities lending transaction. The DB Lending Agent will disclose the method for determining the maximum daily rebate rate as described above to an independent fiduciary of a Client Plan for approval before lending any securities to an Affiliated Borrower on behalf of the Client Plan.

25. For collateral other than cash, the applicable loan fee in respect of any outstanding loan is reviewed daily for competitiveness and adjusted, where necessary, to reflect market terms and conditions. With respect to each successive two-week period, on average, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans will be to unrelated borrowers. This will ensure that the competitiveness of the loan fee will be tested in the marketplace. Accordingly, loans to an Affiliated Borrower should result in competitive rate income to the lending Client Plan. At all times, the DB Lending Agent will effect loans in a prudent and diversified manner. While the DB Lending Agent will normally lend securities to requesting borrowers on a ''first come, first served'' basis, as a means of assuring uniformity of treatment among borrowers, it should be recognized that in some cases it may not be possible to adhere to a ''first come, first served'' allocation. This can occur, for instance where: (a) The credit limit established for such borrower by the DB Lending Agent and/or the Client Plan has already been satisfied; (b) the ''first in line'' borrower is not approved as a borrower by the particular Client Plan whose securities are sought to be borrowed; and (c) the ''first in line'' borrower cannot be ascertained, as an operational matter, because several borrowers spoke to different DB Lending Agent representatives at or about the same time with respect to the same security. In situations (a) and (b), loans would normally be effected with the ''second in line.'' In situation (c), securities would be allocated equitably among all eligible borrowers.

26. The method of determining the daily securities lending rates (fees and rebates), the minimum lending fees payable by the Affiliated Borrowers and the maximum rebate payable to the Affiliated Borrower will be specified in the Agency Agreement or a tripartite agreement.

27. If the DB Lending Agent reduces the lending fee or increases the rebate rate on any outstanding loan to an Affiliated Borrower (except for any change resulting from a change in the value of any third party independent index with respect to which the fee or rebate is calculated), the DB Lending Agent, by the close of business on the date of such adjustment, will provide the independent fiduciary of the Client Plan with notice that it has reduced such fee or increased the rebate rate to such Affiliated Borrower and that the Client Plan may terminate such loan at any time. In addition, the DB Lending Agent will provide the independent fiduciary of the Client Plan with such information as the fiduciary may reasonably request regarding such adjustment.

28. The DB Lending Agent or an affiliate which is domiciled in the United States (for purposes of this paragraph ''the Deutsche Entity''), will indemnify and hold harmless each lending Client Plan in the United States against any shortfall in the collateral, as clearly set forth in the applicable lending agreement, plus interest and any transaction costs incurred (including attorney's fees of the Client Plan arising out of the default on the loans or the failure to indemnify properly under this provision) which the Client Plan may incur or suffer directly arising out of the lending of securities of such Client Plan to such Affiliated Borrowers, to the extent permitted by law, except to the extent that such losses or damages are caused by the Client Plan's negligence.

In the event the Affiliated Borrower defaults on a loan, the DB Lending Agent will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, the DB Lending Agent, or in the case of affiliates which are U.S. broker-dealers, that broker-dealer or another Deutsche Entity [31] will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan arising out of the default on the loans or failure to indemnify properly under this provision). Alternatively, if such identical securities are not available on the market, the DB Lending Agent (or the affiliated U.S. broker-dealer or Deutsche Entity) will pay the Client Plan cash equal to the market value of the borrowed securities as of the date they should have been returned to the Client Plan plus all interest and accrued financial benefits derived from the beneficial ownership of such loaned securities. Under such circumstances, the DB Lending Agent (or the affiliated U.S. broker-dealer or a Deutsche Entity) will pay the Client Plan an amount equal to (a) the value of the securities as of the date such securities should have been returned to the Client Plan plus (b) all of the accrued financial benefits derived from the beneficial ownership of such loan securities as of such date, plus (c) interest from such date through the date of payment.

29. The Client Plan will receive collateral from the Affiliated Borrower by physical delivery, book entry in a U.S. securities depository, wire transfer or similar means by the close of business on or before the day the loaned securities are delivered to the Affiliated Borrower. The collateral will consist of cash, securities issued or guaranteed by the U.S. Government or its agencies or irrevocable U.S. bank letters of credit (issued by a person other than an affiliate of the DB Lending Agent) or such other types of collateral which might be permitted by the Department under a class exemption. The market value of the collateral on the close of business on the day preceding the day of the loan will be at least 102 percent of the market value of the loaned securities. The Loan Agreement will give the Client Plan a continuing security interest in and a lien on or title to the collateral. The DB Lending Agent

[31] It is represented that U.S. banking law prohibits the indemnification of certain affiliates.

will monitor the level of the collateral daily. If the market value of the collateral falls below 100 percent (or such greater percentage as agreed to by the parties) of that of the loaned securities, the DB Lending Agent will require the Affiliated Borrower to deliver, by the close of business the next day, sufficient additional collateral to bring the level back to at least 102 percent.

30. With respect to loans involving Foreign Affiliates, the following additional conditions will be applicable: (a) All collateral will be maintained in United States dollars or dollar-denominated securities or letters of credit; (b) all collateral will be held in the United States and the DB Lending Agent will maintain the situs of the securities loan agreements in the United States under an arrangement that will comply with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404b–1; and (c) a written consent to service of process in the United States for any civil action or proceeding brought in respect of the securities lending transaction, which consent provides that process may be served on the DB Lending Agent.

31. Each Client Plan participating in the lending program will be sent a monthly transaction report. The monthly report will provide a list of all security loans outstanding and closed for a specified period. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rebate or loan premium (as the case may be) at which the security is loaned, and the number of days the security has been on loan. In addition, if requested by the lending customer, the DB Lending Agent will provide more frequent confirmations of securities lending transactions, and, with respect to monthly reports, if requested by the customer, the DB Lending Agent will provide weekly or daily reports, setting forth for each transaction made or outstanding during the relevant reporting period, the loaned securities, the related collateral, rebates and loan premiums and such other information in such format as shall be agreed to by the parties. Further, prior to a Client Plan's approval of a securities lending program, the DB Lending Agent will provide a Client Plan fiduciary with a copy of the proposed exemption and the notice granting the exemption.

32. In order to provide the means for monitoring lending activity, the monthly report will reflect rates on loans by the Client Plans to Affiliated Borrowers and rates on loans to other brokers as well as the level of collateral on the loans. In this regard, the monthly report will show, on a daily basis, the market value of all outstanding security loans to the Affiliated Borrowers and to other borrowers. In addition, the monthly report will state the daily fees where collateral other than cash is utilized and will specify the details used to establish the daily rebate payable to all brokers where cash is used as collateral. Further, the monthly report will state, on a daily basis, the rates at which securities are loaned to the Affiliated Borrowers and those at which securities are loaned to other brokers. This statement will give an independent fiduciary information which can be compared to that contained in the daily rate schedule.

33. Only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to the Affiliated Borrowers. In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization (*i.e.,* the Related Client Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are ''plan assets'' under the Plan Asset Regulation), which entity is engaged in securities lending arrangements with the DB Lending Agent, the foregoing $50 million requirement will be satisfied if such trust or other entity has aggregate assets which are in excess of $50 million. However, if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary must have total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (*i.e.,* the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are ''plan assets'' under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with the DB Lending Agent, the foregoing $50 million requirement will be satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Client Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Client Plan or an employee organization whose members are covered by such Client Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity: (a) Must have full investment responsibility with respect to plan assets invested therein;[32] and (b) must have total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

In addition, none of the entities described above must be formed for the sole purpose of making loans of securities.

34. In summary, the Applicant represents that the described transactions have satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The form of the Loan Agreement pursuant to which any loan is effected has been or will be approved by a fiduciary of the Client Plan which is independent of the DB Lending Agent before a Client Plan lends any securities to an Affiliated Borrower.

(b) The lending arrangements (1) will permit the Client Plans to lend to the Affiliated Borrowers and (2) will enable the Client Plans to diversify the list of eligible borrowers and earn additional income from the loaned securities on a secured basis, while continuing to receive any dividends, interest payments and other distributions due on those securities.

(c) The Client Plans have received or will receive sufficient information concerning the Affiliated Borrowers' financial condition before the Client Plan lends any securities to any of those entities.

(d) The collateral on each loan to the Affiliated Borrowers initially will be at least 102 percent of the market value of the loaned securities, which is in excess of the 100 percent collateral required under PTE 81–6, and has been and will be monitored daily by the DB Lending Agent.

(e) The Client Plans have received and will receive a monthly report which provides an independent fiduciary of

[32] For purposes of this proposed exemption, the term ''full investment responsibility'' means that the fiduciary responsible for making investment decisions on behalf of the group trust or other form of entity, has and exercises discretionary management authority over all of the assets of the group trust or other plan assets entity.

the Client Plans with information on loan activity, fees, loan return/yield and the rates on loans to the Affiliated Borrowers as compared with loans to other brokers and the level of collateral on the loans.

(f) Neither the DB Lending Agent nor any affiliate has or will have discretionary authority or control over the Client Plan's acquisition or disposition of securities available for loan.

(g) The terms of the fee or rebate payable for each loan have been and will be at least as favorable to the Client Plans as those of a comparable arm's length transaction between unrelated parties.

(h) All of the procedures under the transactions have conformed or will conform to the applicable provisions of PTE 81–6 and PTE 82–63 and also have been and will be in compliance with the applicable securities laws of the United States and the local laws of the Foreign Affiliates.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Information Systems Development, Inc. Employees Profit Sharing Plan (the Plan), Located in Cincinnati, Ohio

[Application No. D–10787]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain illiquid limited partnership interests (collectively; the Interests) to CONVERGYS Information Management Group Inc. (the Company), the sponsor of the Plan and a party in interest with respect to the Plan, provided that the following conditions are met:

(1) The sale is a one-time transaction for cash;

(2) The Plan receives an amount equal to the greater of: (a) The Plan's cost for the Interests, less all cash distributions received as a result of owning the Interests (*i.e.*, the adjusted cost), (b) the fair market value of the Interests on the date of the sale, as established by a qualified independent appraiser, or (c) the estimated value of the Interests, as determined by the general partner of each partnership and reported on the most recent account statements available at the time of the sale;

(3) The Plan pays no commissions or any other expenses relating to the sale; and

(4) The Plan suffers no loss, as a result of its acquisition and holding of the Interests, taking into account all cash distributions received by the Plan as a result of owning the Interests.

Summary of Facts and Representations

1. The Plan is a 401(k) defined contribution, profit sharing plan with approximately 43 participants and $2,487,682.52 in total assets as of March 31, 1999. Approximately 1.16% of the Plan's total assets will be involved in the proposed transaction. Mr. James Dahmus, a Senior Vice President and Controller of the Company, is the trustee of the Plan.

The Plan was originally established and maintained by Information Systems Development, Inc. (ISD). The Company acquired ISD effective January 1, 1996, and as a result became the sponsor of the Plan. The Company is in the business of providing billing and customer support solutions for the communications industry, both domestically and internationally.

2. Among the assets of the Plan are investments in five limited partnerships (*i.e.*, the Interests): (i) Pegasus Aircraft Partners, L.P. (Pegasus I); (ii) Pegasus Aircraft Partners II, L.P. (Pegasus II); (iii) Paine Webber Equity Partners Two Limited Partnership (PW Equity); (iv) Paine Webber Preferred Yield Fund, L.P. (PW Yield); and (v) Geodyne Energy Income Ltd. Partnership II D (Geodyne).

3. Pegasus I was formed in June, 1988, for the purpose of acquiring a specified portfolio of used commercial aircraft and leasing them to commercial airlines. The managing general partner is Pegasus Aircraft Management Corporation, located in San Francisco, California.

On December 21, 1988, the Plan purchased its Interests for cash during the original offering to the public through Paine Webber Incorporated (Paine Webber), a sales agent.[33] Specifically, the Plan purchased 255 units in Pegasus I at a price of $20 per unit, for a total purchase price of $5,100. The Plan's interest in Pegasus I represents a 0.006% interest in the partnership. As of December 31, 1998, the Plan had received total distributions from Pegasus I in the amount of $4,917.

4. Pegasus II was formed in April, 1989, also for the purpose of acquiring a specified portfolio of used commercial aircraft and leasing them to commercial airlines. The managing general partner is Pegasus Aircraft Management Corporation, located in San Francisco, California.

On December 21, 1989, the Plan purchased for cash from Paine Webber 1,000 units in Pegasus II at a price of $20 per unit, for a total purchase price of $20,000. The Plan's interest represents a 0.136% interest in Pegasus II. As of December 31, 1998, the Plan had received distributions from Pegasus II in the amount of $15,380.

5. PW Equity was formed in May, 1986, for the purpose of investing in a diversified portfolio of existing, newly-constructed, or to-be-built, income-producing real properties such as apartments, shopping centers, hotels, office buildings and industrial buildings. The managing general partner is Second Equity Partners, Inc., located in Boston, Massachusetts.

On June 30, 1987, the Plan purchased for cash from Paine Webber 35,000 units in PW Equity at a price of $1.00 per unit, for a total purchase price of $35,000. The Plan's interest represents a 0.026% interest in PW Equity. As of May 15, 1998, the Plan received distributions from PW Equity totaling $21,675.81.

6. PW Yield was formed in December, 1989, for the purpose of acquiring a portfolio of equipment for leasing to unaffiliated parties. PW Yield's portfolio of equipment includes industrial, materials handling, mining, medical, research and development, transportation, store fixtures, manufacturing testing and office technology equipment. The managing general partner is CAI Equipment Leasing II Corp., located in Denver, Colorado.

On October 30, 1990, the Plan purchased for cash from Paine Webber 37 units in PW Yield at a price of $500 per unit for a total purchase price of $18,500. The Plan's interest in PW Yield represents a 0.026% interest in the partnership. As of December 31, 1998, the Plan had received distributions from the partnership totaling $19,340.

7. Geodyne was formed in May, 1988, for the purpose of engaging in the business of owning interests in producing oil and gas properties located in the continental United States. The general partner is Geodyne Resources, Inc., located in Tulsa, Oklahoma.

On April 15, 1988, the Plan purchased for cash from Paine Webber 250 units in

[33] The Plan's account relating to the holding of the Interests is currently serviced through a Paine Webber office located in Fort Lauderdale, Florida. The Interests were purchased by the Plan through Paine Webber's office in Plantation, Florida, but this office has now closed.

Geodyne at a price of $100 per unit for a total purchase price of $25,000. The Plan's interest represents a 0.079% interest in Geodyne. As of May 15, 1998, the Plan had received distributions from Geodyne totaling $22,022.

8. The partnerships and their general partners are unrelated to ISD, the Company and the Plan. As noted above, the five limited partnerships (the Partnerships) were organized and marketed by Paine Webber.[34] The Partnerships and their underlying assets are valued semiannually by an independent appraiser.

9. The applicant represents that there is no ready market for the Partnerships, and the general partners are under no obligation to aid in the sale of the Interests. The Company's efforts to find a buyer for the Interests have been unsuccessful. As a result, the Plan now proposes to sell the Interests to the Company. The Company will purchase the Interests for the greater of: (i) The cost of the Interests less the distributions received by the Plan from each Partnership (*i.e.*, the adjusted cost); (ii) fair market value of the Interests, as determined on the date of the proposed sale by an independent, qualified appraiser; or (iii) the estimated value of the Interests, as determined by the general partner of each partnership and reported on the most recent account statements available at the time of the sale.

10. Valuations of the Interests are provided to Paine Webber by independent valuation services twice a year. Pegasus I, Pegasus II, PW Equity and PW Yield are valued by the Valuation Group (VG), an independent qualified appraisal firm located in Memphis, Tennessee, and Geodyne is valued by Stanger & Company (SC), an independent qualified appraisal firm located in Shrewsbury, New Jersey. The VG and SC are independent of each Partnership, the Plan and the Company.

In the reports dated June 22, 1999 (the VG Reports), Michael D. Phelan (Mr. Phelan), the president of VG, stated that the aggregate fair market value of: the Pegasus I Interests is $1,173 ($4.60 per unit); the Pegasus II Interests is $4,690 ($4.69 per unit); the PW Equity Interests is $5,600 ($0.16 per unit); and the PW Yield Interests is $481 ($13 per unit). The VG Reports indicate that these investments are generally illiquid, non-tradeable investment vehicles designed to be held by the original investors until the partnership sponsor elects to sell the underlying assets and make liquidating distributions to limited partners. Although there is no readily available market for the Interests, VG conducts a partnership valuation process involving the following procedures: (i) Financial statement analysis and review of the partnership's legal structure and related issues; (ii) research of the underlying assets; and (iii) analysis related to the market for limited partnership interests and similar traded securities.

11. The fair market value determination for Geodyne was prepared by SC on March 31, 1999 and states that the fair market value per each Geodyne Interest is $18.00 per unit for 250 units for a total price of $4500 (SC Report). SC Report states that in estimating the value of a business or its securities, consideration is typically given to the following approaches to value: the Asset Accumulation or Net Asset Approach, the Capital Market Valuation Approach and the Income Approach.

12. On August 1, 1994, the Plan appointed Fidelity Trust Management Company (Fidelity) as trustee and record-keeper for the Plan's assets (excluding the Interests). The applicant represents that Fidelity did not accept trusteeship over the Interests because, due to their illiquid nature, they could not be valued on the same basis as the Plan's other investments.[35] ISD, the prior Plan sponsor, at that time determined that the Interests had no value and ceased allocations to the participants' accounts with respect to the Interests.[36] The applicant states that it subsequently determined that this approach was incorrect. Therefore, the Company filed an application with the Internal Revenue Service (IRS) on April 21, 1997, under its Voluntary Compliance Resolution Program (VCR Program). A compliance statement was issued in September of 1997, approving the correction methodology of allocating the value of the Interests on a pro rata basis to the participants' accounts.

The Company now desires to purchase the Interests from the Plan for cash in order to allow the Plan to accomplish this allocation. The Plan allows its participants to access their account valuations, and to direct the investment of their accounts, on a daily basis. However, the applicant states that the Interests are illiquid and incompatible with the Plan's daily valuation system. The sale of the Interests to the Company would allow the participants to receive an allocation of cash which they could invest in other investment vehicles offered under the Plan, and would facilitate distributions from the Plan.

13. The Company proposes to pay the Plan the greater of: (i) The original purchase price of the Interests less distributions received from the Partnerships (*i.e.*, adjusted cost); (ii) the fair market value as of the date of the sale, as established by a qualified independent appraiser; or (iii) the estimated value of the Interests, as determined by the general partner of each Partnership and reported on the most recent account statements available at the time of the sale. With respect to the valuations noted in item (ii) above, the applicant represents that fair market value of the Interests is determined twice a year by an independent, qualified valuation firm and provided to Paine Webber for the purpose of issuing account statements. The Paine Webber account statements also include an estimated value provided by the general partner of each Partnership, which indicate the amounts noted in item (iii) above. Based on the most recent Paine Webber statements, the Company would buy the Interests for the purchase price shown in the table below.

Partnership	Adjusted cost [37]	Fair market value	Issuer value [38]	Purchase price
Pegasus I	$183	$1,173	$1,877	$1,877
Pegasus II	4,620	4,690	7,210	7,210
PW Equity	13,324	5,600	9,450	13,324
PW Yield	(840)	481	777	777

[34] The applicant represents that Paine Webber is not the general partner of any of the Partnerships; however, Paine Webber's parent company, Paine Webber Group Inc., is the parent company of the following general partners:

Pegasus I—Air Transport Leasing, Inc. (Administrative general partner)

Pegasus II—Air Transport Leasing, Inc. (Administrative general partner)

PW Yield—General Equipment Management, Inc. (Administrative general partner)

PW Equity—Second Equity Partners, Inc. (Managing general partner)

[35] Paine Webber is currently the custodian of the Interests.

[36] The Department is providing no opinion herein regarding whether ISD's determinations with respect to the Interests violated any provision of Part 4 of Title I of the Act.

Partnership	Adjusted cost [37]	Fair market value	Issuer value [38]	Purchase price
Geodyne	2,998	4,500	5,783	5,783
Total	.....	.....	.....	28,971

14. *Certain Repurchase Offers for the Interests.* The applicant states that the general partner of Geodyne is obligated by the terms of the Partnership agreement to annually issue a repurchase offer which is based on the estimated future net revenues from the Partnership's reserves. The most recent repurchase offer was for an amount which was less than either the third party determination of fair market value, or the issuer estimated value. The current repurchase price is in the process of being determined.

Three purchase offers were made in 1998 to the limited partners in PW Equity. First Commercial Guarantee, in an offer dated May 8, 1998, was seeking to acquire up to 0.8% of the outstanding Interests for $0.28 per Interest. Madison Partnership Liquidity Investors 27, LLC, in an offer dated April 29, 1998, was seeking to acquire up to 4.9% of the outstanding Interests for $0.21 per interest. Smithtown Bay, LLC, in an offer dated March 11, 1998, was seeking to acquire approximately 4.9% of the outstanding Interests for $0.20 per Interest. The applicant represents, however, that the managing general partner advised the limited partners of PW Equity that it did not support these offers because such offers were financially inadequate as compared to the managing general partner's recent estimate of the Partnership's value.

A repurchase offer was recently made to the limited partners in Pegasus II. Madison Liquidity Investors 102, LLC, in an offer dated March 23, 1999, was seeking to acquire up to 4.9% of the outstanding Interests for $3.50 per Interest. The offer expired April 30, 1999. The purchase price of $3.50 per Interest was less than the general partners estimate and a third party estimate of value.

15. The applicant represents that the proposed transaction is administratively feasible, and in the best interest and protective of the Plan. The transaction will be for cash and the Plan will pay no costs or commissions associated with the sale. Furthermore, the applicant represents that the Interests are the subject of a Compliance Statement between the IRS and the Company. The Compliance Statement states that the participants' accounts would be credited with their pro rata share of the value of the Interests. Therefore, cash received from the sale of the Interests will be allocated to the participants' accounts in the Plan. Additionally, the Plan has changed to daily recordkeeping, and the Interests cannot be valued on the daily basis. The applicant represents that the Interests are incompatible with the Plan's current investment environment, which allows the participants to obtain the value of their accounts and direct the investment of their accounts on the daily basis. Therefore, liquidating the Interests would generate cash to the Plan that would facilitate any required distributions to the Plan's participants and beneficiaries. The applicant states that if the Interests were sold to an unrelated third party, the Plan would receive substantially less than the amounts the Company is proposing to pay for the Interests. Furthermore, the applicant represents that any amounts received by the Plan as a result of the proposed transaction, which are in excess of the fair market value of the Interests will be treated as a contribution to the Plan, but that this contribution will not exceed limitations of section 415 of the Internal Revenue Code.

16. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (a) The sale will be a one-time transaction for cash; (b) the Plan will pay no commissions or any other expenses relating to the sale; (c) the Plan will receive an amount equal to the greater of: (i) The Plan's cost for the Interests, less all cash distributions received as a result of owning the Interests (*i.e.*, the adjusted cost), (ii) the fair market value of the Interests on the date of the sale, as established by a qualified independent appraiser, or (iii) the estimated value of the Interests, as determined by the general partner and reported on the most recent account statements available at the time of the sale; and (d) the sale will enhance the liquidity and diversification of the Plan's assets and facilitate any required distributions to the participants and beneficiaries.

Tax Consequences of Transaction

The Department of Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or an affiliate thereof) results in the plan either paying less or receiving more than fair market value, such excess may be considered a contribution by the sponsoring employer to the plan, and therefore must be examined under the applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

Notice to Interested Persons

Notice of the proposed exemption will be given to all interested parties (participants and beneficiaries) by first class mail or inter-office mail within ten (10) days of the date of publication of this notice of pendency in the **Federal Register**. Such notice will include a copy of the notice of proposed exemption as published in the **Federal Register** and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). This supplemental statement will inform all interested persons of their right to comment on the proposed exemption and to request a hearing. All written comments and requests for a hearing are due within forty (40) days of the publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the

[37] The adjusted cost is the cost of the Interests less distributions received by the Plan from each Partnership.

[38] This is the estimated value of the Interests as determined by the general partner of each Partnership.

interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 18th day of October, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 99–27520 Filed 10–21–99; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group Exploring the Possibility of Using Surplus Pension Assets To Secure Retiree Health Benefits Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held on Wednesday, November 10, 1999, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to explore the possibility of using surplus pension assets to secure retiree health benefits.

The session will take place in Room N–3437 A–B, U.S. Department of Labor Building, Second and Constitution Avenue NW, Washington DC 20210. The purpose of the open meeting, which will run from 9:30 a.m. to approximately 11:30 a.m., is for working group members to finalize the committee's report to be presented that afternoon to the full Advisory Council.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before November 1, 1999, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by November 1, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before November 1.

Signed at Washington, DC, this 18th day of October, 1999

Richard McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 99–27652 Filed 10–21–99; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group Studying Issues Surrounding the Trend in the Defined Benefit Plan Market With a Focus on Employer-Sponsored Hybrid Plans Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held on Tuesday, November 9, 1999, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study issues surrounding trends in the defined benefit market with a focus on employer-sponsored hybrid plans.

The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon N–3427 A–B, U.S. Department of Labor Building, Second and Constitution Avenue NW, Washington DC 20210, is for working group members to complete the committee's report/recommendations for the 1999 topic.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before November 1, 1999, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by November 1, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before November 1.

Signed at Washington, DC, this 18th day of October, 1999.

Richard McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 99–27653 Filed 10–21–99; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

108th Meeting of the Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 108th public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Wednesday, November 10, 1999.

The purpose of the open meeting, which will run from 1 p.m. to approximately 3:30 p.m. in the Secretary's Conference Room in S–2508, U.S. Department of Labor Building, Second and Constitution Avenue NW, Washington, DC 20210, is for the three 1999 working group chairs to present their committees' reports to the full body for acceptance and for the presentation of a status report on the activities of the Pension and Welfare Benefits Administration, which staffs the Advisory Council for the Secretary of Labor. In addition, the Advisory Council will bid farewell to five members who are completing their three-year terms of office. They include Barbara Uberti, current chair of the Advisory Council; Dr. Thomas J. Mackell, Jr., current vice chair of the Council; Michael Fanning, J. Kenneth Blackwell and Neil Grossman.

Working Group topics and the chairs of those working groups are:

- Benefit Implications of a Contingent Workforce, Mr. Fanning;
- Exploring the Possibility of Using Pension Surplus to Fund Retiree Health Benefits, Michael J. Gulotta, and
- The Trend in the Defined Benefit Plan Market with a Focus on Hybrid Plans, including Cash Balance Plans, Judith F. Mazo.

Members of the public are encouraged to file a written statement pertaining to any of these topics by submitting 20 copies on or before November 1, 1999, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the full Advisory Council should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by November 1, at the address indicated in this notice.

Organizations or individuals also may submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before November 1.

Signed at Washington, DC, this 18th day of October, 1999.

Richard McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 99–27654 Filed 10–21–99; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on the Benefit Implications Due to the Growth of a Contingent Workforce Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Working Group assigned by the Advisory Council on Employee Welfare and Pension Benefit Plans to study what the benefit implications are due to the growth of a contingent workforce will hold an open public meeting on Tuesday, November 9, 1999, in Room N3437 A–B, U.S. Department of Labor Building, Second and Constitution Avenue, NW, Washington, DC 20210.

The purpose of the open meeting, which will run from 1 p.m. to approximately 3:30 p.m., if for Working Group members to complete its report and recommendations for the year to present November 10 at the full Advisory Council meeting.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before November 1, 1999, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by November 1, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before November 1.

Signed at Washington, DC, this 18th day of October, 1999.

Richard McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 99–27655 Filed 10–21–99; 8:45 am]

BILLING CODE 4510–29–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304] s

Commonwealth Edison Company (Zion Nuclear Power Station Units 1 and 2); Exemption

I

Commonwealth Edison Company (ComEd or the licensee) is the holder of Facility Operating License Nos. DPR–39 and DPR–48, which authorize the licensee to possess the Zion Nuclear Power Station (ZNPS). The license states, among other things, that the facility is subject to all the rules, regulations, and orders of the US Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facility consists of two pressurized-water reactors located at the ComEd site on the west shore of Lake Michigan about 40 miles north of Chicago, Illinois, in the extreme eastern portion of the city of Zion, Illinois (Lake County). The facility is permanently shut down and defueled, and the licensee is no longer authorized to operate or place fuel in the reactor.

II

Section 73.55 of Title 10 of the Code of Federal Regulations, ''Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage,'' states that ''The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and

do not constitute an unreasonable risk to the public health and safety.''

By letter dated July 30, 1999, the licensee requested an exemption from certain requirements of 10 CFR 73.55. These requirements are: (1) 10 CFR 73.55(a)—the requirement that a licensed senior operator suspend safeguards measures and assigning that authority to a certified fuel handler; (2) 10 CFR 73.55(c)(6)—the requirement that the reactor control room be bullet resisting; (3) 10 CFR 73.55(e)(1)—the requirements to have a secondary alarm station, that the central alarm station be located in the protected area, that the central alarm station be classified as a vital area, and that the onsite secondary power supply system for alarm annunciator equipment and non-portable communication equipment be located in a vital area; (4) 10 CFR 73.55(f)(4)—the requirement that non-portable communication equipment located in the central alarm station remain operable from independent power sources if normal power is lost; and (5) 10 CFR 73.55(h)(3)—the requirement to have five or more guards per shift immediately available to fulfill response requirements. The proposed exemption is a preliminary step toward enabling ComEd to revise the Zion Security Plan under 10 CFR 50.54(p) to implement a defueled security plan that was developed to protect against radiological sabotage at a permanently shutdown reactor facility with all fuel stored in the spent fuel storage pool.

III

Pursuant to 10 CFR 73.5, ''Specific exemptions,'' the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest. Section 73.55 allows the Commission to authorize a licensee to provide alternative measures for protection against radiological sabotage, provided the licensee demonstrates that the proposed measures meet the general performance requirements of the regulation and that the overall level of system performance provides protection against radiological sabotage equivalent to that provided by the regulation.

The underlying purpose of 10 CFR 73.55 is to provide reasonable assurance that adequate security measures can be taken in the event of an act of radiological sabotage. Because of its permanently shutdown and defueled condition, the number of target sets susceptible to sabotage attacks has been reduced. In addition, with more than 31 months of radiological and heat decay since ZNPS was shut down on February 21, 1997, the radiological hazards associated with the remaining target sets, even if subject to sabotage attack, do not pose a significant threat to the public health and safety.

IV

For the foregoing reasons, the Commission has determined that the proposed alternative measures for protection against radiological sabotage meet the same assurance objective and the general performance requirements of 10 CFR 73.55 considering the permanently shutdown conditions at the ZNPS with all of the fuel in the spent fuel pool. In addition, the staff has determined that the overall level of the proposed system's performance, as limited by this exemption, would not result in a reduction in the physical protection capabilities for the protection of special nuclear material or of the Zion Nuclear Power Station. Specifically, an exemption is being granted for five (5) specific areas in which the licensee is authorized to modify the existing security plan commitments commensurate with the security threats associated with a permanently shutdown and defueled site, as follows: (1) 10 CFR 73.55(a)—an exemption from the requirement that a licensed senior operator suspend safeguards measures and assigning that authority to a certified fuel handler; (2) 10 CFR 73.55(c)(6)—an exemption from the requirement that the reactor control room be bullet resisting; (3) 10 CFR 73.55(e)(1)—an exemption from the requirements to have a secondary alarm station, that the central alarm station be located in the protected area, that the central alarm station be classified as a vital area, and that the onsite secondary power supply system for alarm annunciator equipment and non-portable communication equipment be located in a vital area; (4) 10 CFR 73.55(f)(4)—an exemption from the requirement that non-portable communication equipment located in the central alarm station remain operable from independent power sources if normal power is lost; and (5) 10 CFR 73.55(h)(3)—an exemption from the requirement to have five or more guards per shift immediately available to fulfill response requirements.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, this 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 Commonwealth Edison an exemption as described above from those requirements of 10 CFR 73.55 at the Zion Nuclear Power Station in its permanently shutdown and defueled condition.

Pursuant to 10 CFR 51.32, the Commission has determined that this exemption will not have a significant effect on the quality of the human environment (64 FR 53423).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 18th day of October 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management Office of Nuclear Reactor Regulation.

[FR Doc. 99–27683 Filed 10–21–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255]

Consumers Energy Company, Palisades Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an amendment to Facility Operating License No. DPR–20 issued to the Consumers Energy Company (the licensee) for operation of the Palisades Plant, located in Van Buren County, Michigan.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment would replace the current Technical Specifications (CTS) in their entirety with improved TSs (ITS) based on the guidance provided in NUREG–1432, Revision 1, ''Standard Technical Specifications, Combustion Engineering Plants,'' dated April 1995. The proposed action is in accordance with the licensee's application for amendment dated January 26, 1998, as supplemented by letters dated April 30, September 14, October 12, and November 9, 1998, and March 1, March 22, March 30, April 7, May 3, June 4, June 11, June 17, July 19, July 30, September 17, and September 30, 1999.

The Need for the Proposed Action

It has been recognized that nuclear safety in all plants would benefit from improvement and standardization of technical specifications (TSs). The

''NRC Interim Policy Statement on Technical Specification Improvements for Nuclear Power Plants'' (52 FR 3788) contained proposed criteria for defining the scope of TS. Later, the Commission's ''Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors'' (58 FR 39132) incorporated lessons learned since publication of the interim policy statement and formed the basis for revisions to 10 CFR 50.36, ''Technical Specifications.'' The ''Final Rule'' (60 FR 36953) codified criteria for determining the content of TSs. Each power reactor vendor owners' group and the NRC staff developed standard TSs (STS). The NRC Committee to Review Generic Requirements reviewed the STS, made note of their safety merits, and indicated its support of conversion by operating plants to the STS. For Palisades, the STS are NUREG–1432, Revision 1, ''Standard Technical Specifications, Combustion Engineering Plants,'' dated April 1995. This document forms the basis for the Palisades ITS conversion.

Description of the Proposed Change

The proposed changes to the CTS are based on NUREG–1432 and on guidance provided by the Commission in its Final Policy Statement. The objective of the changes is to completely rewrite, reformat, and streamline the CTS. Emphasis is placed on human factors principles to improve clarity and understanding of the TSs. The Bases section of the ITS has been significantly expanded to clarify and better explain the purpose and foundation of each specification. In addition to NUREG–1432, portions of the CTS were also used as the basis for the development of the Palisades ITS. Plant-specific issues (*e.g.*, unique design features, requirements, and operating practices) were discussed with the licensee.

The proposed changes from the CTS can be grouped into four general categories. These groupings are characterized as administrative changes, technical changes—relocations, technical changes—more restrictive, and technical changes—less restrictive. These categories are described as follows:

1. Administrative changes are those that involve restructuring, renumbering, rewording, interpretation, and rearranging of requirements and other changes not affecting technical content or substantially revising an operational requirement. The reformatting, renumbering, and rewording processes reflect the attributes of NUREG–1432 and do not involve technical changes to the CTS. The proposed changes include (a) providing the appropriate numbers, *etc.*, for NUREG–1432 bracketed information (information that must be supplied on a plant-specific basis, and which may change from plant to plant), (b) identifying plant-specific wording for system names, *etc.*, and (c) changing NUREG–1432 section wording to conform to existing licensee practices. Such changes are administrative in nature and do not affect initiators of analyzed events or assumed mitigation of accident or transient events.

2. Technical changes—relocations are those changes involving relocation of requirements and surveillances from the CTS to licensee-controlled documents. The relocated requirements do not satisfy or fall within any of the four criteria specified in the Commission's Final Policy Statement and 10 CFR 50.36(c)(2)(ii)(A)–(D), and may be relocated to appropriate licensee-controlled documents.

The licensee's application of the screening criteria is described in Volume 1 of its January 26, 1998, application, ''Palisades Plant Request for Conversion to Improved Technical Specifications.'' The affected structures, systems, components, or variables are not assumed to be initiators of events analyzed in the Updated Final Safety Analysis Report (UFSAR) and are not assumed to mitigate accident or transient events analyzed in the UFSAR. The requirements and surveillances for these affected structures, systems, components, or variables will be relocated from the CTS to administratively controlled documents such as the UFSAR, the Bases, or other licensee-controlled documents. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other appropriate control mechanisms.

3. Technical Changes—more restrictive are those changes that involve more stringent requirements for operation of the facility or eliminate existing flexibility. These more stringent requirements do not result in operation that will alter assumptions relative to mitigation of an accident or transient event. In general, these more restrictive technical changes have been made to achieve consistency, correct discrepancies, and remove ambiguities from the specifications.

4. Technical changes—less restrictive are changes where current requirements are relaxed or eliminated, or new flexibility is provided. The more significant ''less restrictive'' requirements are justified on a case-by-case basis. When requirements have been shown to provide little or no safety benefit, their removal from the ITS may be appropriate. In most cases, relaxations granted to individual plants on a plant-specific basis were the result of (a) generic NRC actions, (b) new NRC staff positions that have evolved from technological advancements and operating experience, or (c) resolution of comments from the owners groups on the ITS. Generic relaxations contained in NUREG–1432 were reviewed by the NRC staff and found to be acceptable because they are consistent with current licensing practices and NRC regulations. Each less restrictive change in the Palisades conversion was justified by the licensee in a Discussion of Change and reviewed by the NRC staff.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed conversion of the CTS to the ITS for Palisades. Changes which are administrative in nature have been found to have no effect on the technical content of the TS and are acceptable. The increased clarity and understanding these changes bring to the TS are expected to improve the operators' control of the plant in normal and accident conditions. Relocation of requirements to other licensee-controlled documents does not change the requirements themselves nor does 10 CFR 50.36(c)(2)(ii) mandate that the TSs include these requirements. Further changes to these requirements may be made by the licensee under 10 CFR 50.59 or other NRC-approved control mechanisms that ensure continued maintenance of adequate requirements. All such relocations have been found to be in conformance with the guidelines of NUREG–1432 and the Final Policy Statement, and are, therefore, acceptable.

Changes involving more restrictive requirements have been found to enhance plant safety and to be acceptable.

Changes involving less restrictive requirements have been reviewed individually. When requirements have been shown to provide little or no safety benefit or to place unnecessary burden on the licensee, their removal from the TSs was justified. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of a generic action, or of agreements reached during discussions with the Owners Groups and found to be acceptable for Palisades. Generic relaxations contained in NUREG–1432 have also been reviewed by the NRC staff and have been found to be acceptable.

In summary, the proposed revisions to the CTS have been found to provide control of plant operations such that

reasonable assurance will be provided that the health and safety of the public will be adequately protected.

These TS changes will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed TS amendment.

With regard to potential nonradiological impacts, the proposed amendment involves features located entirely within the restricted area as defined in 10 CFR part 20 and does not involve any historical sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed TS amendment.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Palisades Plant.

Agencies and Persons Consulted

In accordance with its stated policy, on October 4, 1999, the Commission consulted with the State official, Ms. Maryanne Elzerman of the Michigan Department of Environmental Quality, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's application dated January 26, 1998, as supplemented by letters dated April 30, September 14, October 12, and November 9, 1998, and March 1, March 22, March 30, April 7, May 3, June 4, June 11, June 17, July 19, July 30, September 17, and September 30, 1999, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Van Wylen Library, Hope College, Holland, Michigan 49423–3698.

Dated at Rockville, Maryland, this 18th day of October 1999.

For the Nuclear Regulatory Commission.

Robert G. Schaaf,

Project Manager, Section 1 Project Directorate III, Division of Licensing Project Management. Office of Nuclear Reactor Regulation.

[FR Doc. 99–27684 Filed 10–21–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Applications for Licenses To Export Nuclear Material

Pursuant to 10 CFR 110.70(b) ''Public notice of receipt of an application'', please take notice that the Nuclear Regulatory Commission has received the following application for an export license. Copies of the application are on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register.** Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the applications for licenses to export deuterium oxide (heavy water) as defined in 10 CFR part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning the application follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant, Date of application, Date received, Application number	Description of items to be exported	Country of destination
Department of Energy—Savannah River 09/23/99, 10/07/99, XMAT0399	Deuterium oxide (heavy water) 41,000 kilograms for upgrading and return to U.S.	Canada.

For the Nuclear Regulatory Commission.

Dated this 14th day of October 1999 at Rockville, Maryland.

Ronald D. Hauber,

Acting Director, Office of International Programs.

[FR Doc. 99–27682 Filed 10–21–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Forest Laboratories, Inc., Common Stock, Par Value $.10 per Share, and Associated Rights To Purchase One One-Hundredth Share of Series A Junior Participating Preferred Stock, Par Value $1.00 per Share) File No. 1–5438

October 18, 1999.

Forest Laboratories, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder the securities specified above (''Securities'') from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Securities have been listed on the Amex and, pursuant to a Registration Statement on Form 8–A file with the Commission which became effective on October 8, 1999, on the New York Stock Exchange, Inc. (''NYSE''). Trading in the Common Stock of the Company commenced on the NYSE at the opening of business on October 8, 1999.

The Company has complied with the rules of the Amex by filing with the Exchange a certified copy of the preambles and resolutions adopted by the Company's Board of Directors authorizing the withdrawal of the Securities from listing on the Exchange and by setting forth in detail to the Amex the reasons for such proposed withdrawal and the facts in support thereof. The Amex has in turn informed the Company that it will not interpose any objection to the withdrawal of the Company's Securities from listing on the Exchange.

In making the decision to withdraw its Securities from the Amex upon listing them on the NYSE, the Company considered the direct and indirect costs, as well as the division of the trading market, which would result from maintaining listings on both the NYSE and the Amex.

The Company's application relates solely to the withdrawal of the Securities from listing on the Amex and shall have no effect upon the continued listing and registration of the Securities on the NYSE. Moreover, by reason of Section 12(b) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports with the Commission and NYSE under Section 13 of the Act.

Any interested person may, on or before November 8, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–27595 Filed 10–21–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Gildan Activewear Inc./ Les Vetements de Sports Gildan Inc., Class A Subordinate Voting Shares, Without Par Value) File No. 1–14830

October 18, 1999.

Gildan Activewear Inc./Les Vetements de Sports Gildan Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the security specified above (''Security'') from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').[1]

The Security has been listed for trading on the Amex and, pursuant to a Registration Statement on Form 8–A filed with the Commission which became effective on August 30, 1999, on the New York Stock Exchange, Inc. (''NYSE''). Trading in the Security on the NYSE commenced at the opening of business on September 1, 1999.

The Company has complied with the rules of the Amex by filing with the Exchange a certified copy of the preambles and resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Security from listing on the Exchange and by setting forth in detail to the Amex the reasons for such proposed withdrawal and the facts in support thereof. The Amex has in turn informed the Company that it will not interpose any objection to the withdrawal of the Company's Security from listing on the Exchange.

In making the decision to withdraw its Security from listing on the Amex and to list it instead on the NYSE, the Company has represented that its long-term interests will be best served by listing on the NYSE, as it is both North America's largest stock exchange and also the exchange on which the shares of the Company's primary competitors trade.

The Company's application relates solely to the withdrawal of the Security from listing on the Amex and shall have no effect upon the continued listing of the Security on the NYSE. Moreover, by reason of Section 12(b) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to obligated to file reports with the Commission and the NYSE under Section 13 of the Act.

Any interested person may, on or before November 8, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–27594 Filed 10–21–99; 8:45 am]

BILLING CODE 8010–01–M

[1] Notice of this application was previously issued by the Commission as Securities Exchange Act Release No. 41903 on September 22, 1999. Such notice, however, failed to appear in the **Federal Register**, as required, and so is being reissued.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27088]

Filings Under the Public Utility Holding Company Act of 1935, as amended (''Act'')

October 15, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the applications(s) and/or declaration(s) for complete statements of the proposed transactions(s) summarized below. The application(s) and/or declarations(s) and any amendments is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the applications(s) and/or declaration(s) should submit their views in writing by November 9, 1999, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After November 9, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Jersey Central Power & Light Company (70–6903)

Jersey Central Power & Light Company (''JCP&L''), 2800 Pottsville Pike, Reading, Pennsylvania 19605, an electric utility subsidiary of GPU, Inc., a registered holding company, has filed a post-effective amendment to its application under sections 9(a) and 10 of the Act and rule 54 under the Act.

By orders dated November 16, 1983 (HCAR No. 23121), November 19, 1984 (HCAR No. 23486), July 30, 1985 (HCAR No. 23773), June 27, 1986 (HCAR No. 24138), January 17, 1990 (HCAR No. 25007), and October 24, 1994 (HCAR No. 26149) (''Orders''), the Commission authorized JCP&L, from time to time through December 31, 1999 (''Authorization Period''), to acquire obligations of its electric customers with an aggregate value of up to $15 million. These obligations arise from participation by these customers in the JCP&L Home Energy Loan Program, Solar Water Heating Conversion Program, and Electric Heat Conversion Program (''Programs'') and consist of notes evidencing disbursements made by JCP&L to contractors on behalf of its customers in connection with the Programs. In the Orders the Commission also authorized JCP&L to incur up to $750,000 in administrative and other expenses related to the Programs.

JCP&L now requests the Commission to extend the Authorization Period through March 31, 2005. In all other respects the proposed transactions would not differ from those previously approved by the Commission in this proceeding.

American Electric Power Company, Inc., et al. (70–9353)

American Electric Power Company, Inc., a registered holding company, and its nonutility subsidiaries, AEP Resources, Inc. (''Resources'') and AEP Energy Services, Inc. (''Services'') (together, ''Applicants''), all located at 1 Riverside Plaza, Columbus, Ohio 43215, have filed a post-effective amendment under section 12(c) of the Act and rules 46(a) and 54 under the Act to their application-declaration previously filed under the Act.

By orders dated September 13, 1996 and September 27, 1996 (HCAR Nos. 26572 and 26583), the Commission authorized AEP to form one or more direct or indirect nonutility subsidiaries to broker and market energy commodities (''Commodities Business''). Subsequently, by order dated November 2, 1998 (HCAR No. 26933), the Applicants were authorized to invest up to $800 million in certain nonutility assets related to the Commodities Business (''Energy Assets'') or in the equity securities of companies whose assets substantially consist of Energy Assets (''Energy Asset Subsidiaries'').

The Applicants now request authority for the Energy Asset Subsidiaries to pay dividends to their parent companies from time to time out of capital or unearned surplus. The Applicants state that the ability of the Energy Asset Subsidiaries to use distributable cash to pay dividends to Resources or Services will benefit the AEP system by enabling Resources and Services to pay dividends to AEP or to apply those amounts to reducing or refinancing outstanding bank borrowings and to fund the operations of AEP's other subsidiaries.

For the Commission by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–27598 Filed 10–21–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (Starwood Hotels & Resorts Worldwide, Inc., Common Stock, Par Value $.01 Per Share; Preferred Stock Purchase Rights; and Class B Shares of Beneficial Interest, Par Value $.01 Per Share) File No. 1–7959

October 18, 1999.

Starwood Hotels & Resorts Worldwide, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities (''Securities'') from listing and registration on the Pacific Exchange, Inc. (''PCX''or ''Exchange''.) [1]

The reasons cited in the application for withdrawing the Securities from listing and registration include the following:

The Company maintains that it derives no advantage from having its Securities listed on the PCX. The Securities are also currently listed on the New York Stock Exchange, Inc. (''NYSE'') where they trade together as a unit. The Company represents that the bulk of the trading in the Securities occurs on the NYSE. In view of the comparatively low level of trading in the Securities on the PCX, the Company has determined that the expenses attributable to maintaining their listing and registration on the PCX are not in the best interests of the Company or its shareholders.

The Company has complied with the rules of the PCX by filing with the Exchange a certified copy of resolutions adopted by the Company's Board of Directors authorizing withdrawal of its Securities from listing on the PCX as well as correspondence setting forth in detail to the Exchange the reasons for such proposed withdrawal, and the facts in support thereof.

[1] Notice of this application was previously issued by the Commission as Securities Exchange Act Release No. 41902 on September 22, 1999. Such notice, however, failed to appear in the Federal Register, as required, and so is being reissued.

The Exchange has informed the Company that it has no objection to the withdrawal of the Company's Securities from listing on the PCX.

This application relates solely to the withdrawal by the Company of the Securities' listing on the PCX and shall have no effect upon the continued listing of such Securities on the NYSE. By reason of Section 12(b) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports with the Commission and the NYSE under Section 13 of the Act.

Any interested person may, on or before November 8, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–27596 Filed 10–21–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24086; 812–11812]

Equity Managers Trust and Neuberger Berman Equity Trust; Notice of Application

October 15, 1999.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants, Equity Managers Trust (''Managers Trust'') and Neuberger Berman Equity Trust (''Berman Trust''), seek an order to permit an in-kind redemption of shares of a series of the Berman Trust (''Feeder Fund'') by an affiliated person of the Feeder Fund.

FILING DATES: The application was filed on October 13, 1999. Applicants have agreed to file an amendment, the substance of which is reflected in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 9, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, 605 Third Avenue, 2nd Floor, New York, New York 10158–0180.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Counsel, at (202) 942–0572 or Christine Y. Greenlees, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Managers Trust, a New York common law trust, and the Berman Trust, a Delaware business trust, are registered under the Act as open-end management investment companies. The Managers Trust offers shares in nine separate series, including the Neuberger Berman Socially Responsive Portfolio (the ''Master fund''). The Feeder Fund is one of ten series of the Berman Trust. The Feeder Fund and the Master Fund are organized in a ''master-feeder'' structure under which the Feeder Fund invests all of its net assets in the Master Fund. Neuberger Berman Management Inc. and Neuberger Berman, LLC (collectively, the ''Advisers'') serve as investment adviser and sub-adviser, respectively, to the Master Fund. The Advisers are registered under the Investment Advisers Act of 1940.

2. As of August 31, 1999, the Feeder Fund owned 63.74% of the Master Fund. The Feeder Fund's sole shareholder is the Deferred Compensation Plan of the City of New York and Related Agencies and Instrumentalities (the ''Plan''), a tax-exempt qualified employee benefit plan for employees of the City of New York and its related agencies and instrumentalities.

3. The Plan has advised the Feeder Fund that it intends to redeem all of it shares of the Feeder Fund and that it would like to be paid in-kind. To effect the in-kind redemption, the Master Fund would transfer portfolio securities to the Feeder Fund, which would then transfer the securities to the Plan. The Plan will then transfer its assets to an account managed by Citizens Advisors, which is not affiliated with applicants, the Advisers, or any other entity in the Neuberger Berman complex.

4. The Master Fund's and the Feeder Fund's registration statements provide that, under certain circumstances, each Fund may satisfy a request for redemption in-kind with portfolio securities. The boards of trustees of the Managers Trust and the Berman Trust, including in each case a majority of the trustees who are not ''interested persons,'' as that term is defined in section 2(a)(19) of the Act, have determined that it would be in the best interests of the shareholders of the Managers Trust and the Berman Trust to redeem the shares of the Plan in-kind.

Applicants' Legal Analysis

1. Section 17(a)(2) of the Act generally prohibits an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from knowingly purchasing any security or other property (except securities of which the seller is the issuer) from the company. Section 2(a)(3) of the Act defines ''affiliated person'' of another person to include, among others, any person owning 5% or more of the outstanding voting securities of the other person and any person controlling, controlled by or under common control with the other person. Under section 2(a)(9) of the Act, a person that owns beneficially more than 25% of the voting securities of a company is presumed to control the company.

2. Applicants state that the Feeder Fund, as the holder of 63.74% of the outstanding voting securities of the Master Fund, would be an affiliated person of the Master Fund and would be presumed to control the Master Fund. In addition, as the sole shareholder of the Feeder Fund, the Plan is an affiliated person of the Feeder Fund and is presumed to control the Feeder Fund.

Applicants state that to the extent that an in-kind redemption could be viewed as involving the ''purchase'' of portfolio securities by the Feeder Fund from the Master Fund, and by the Plan from the Feeder Fund, section 17(a)(2) may prohibit the transaction.

3. Section 17(b) of the Act provides that, notwithstanding section 17(a) of the Act, the Commission will exempt a proposed transaction from section 17(a) of the Act if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

4. Applicants submit that the terms of the transaction meet the standards set forth in section 17(b) of the Act. Applicants state that neither the Advisers nor the Plan will have any opportunity to select the specific portfolio securities to be distributed. Rather, the Plan will receive a *pro rata* share of each portfolio security held by the Master Fund, except for odd lot securities, fractional shares, and accruals on such securities, certificates of deposit, and proceeds from the liquidation of S&P 500 Index futures contracts held by the Master Fund. Applicants further state that the portfolio securities to be distributed to the Plan will be valued according to an objective, verifiable standard and that the in-kind redemption is consistent with the investment policies of the Feeder Fund and the Master Fund. Applicants also state that the proposed in-kind redemption is consistent with the general purposes of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The securities distributed pursuant to the redemption in-kind (the ''In-Kind Securities'') will be distributed on a *pro rata* basis, provided that cash will be distributed: (a) For certificates of deposit; (b) in lieu of shares not amounting to round lots, fractional shares, and accruals on such securities; and (c) as proceeds from the liquidation of S&P 500 Index future contracts held by the Master Fund.

2. The In-Kind Securities distributed to the Plan will be valued in the same manner as they would be valued for purposes of computing each of the Feeder Fund's and the Master Fund's net asset value.

3. The Feeder Fund and the Master Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which the in-kind redemption occurs, the first two years in an easily accessible place, a written record of the redemption setting forth a description of each security distributed in-kind, the terms of the in-kind distribution and the information or materials upon which the valuation was made.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–27597 Filed 10–21–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24087, 812–11728]

Federated Investors, Inc., et al.; Notice of Application

October 18, 1999.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(f) and 21(b) of the Act, under section 12(d)(1)(J) of the Act for an exemption from section 12(d)(1) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(3) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

SUMMARY OF THE APPLICATION: Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

APPLICANTS: Federated Investors, Inc. (''Federated''), for itself and on behalf of Federated investment Management Company, Federated Global investment Management Corp., Federated Investment Counseling, and Passport Research Limited (collectively, with Federated, the ''Advisers''); Automated Government Money Trust, Cash Trust Series II, Edward D. Jones & Co. Daily Passport Cash Trust, Federated ARMs Fund, Federated Core Trust, Federated Equity Funds, Federated GNMA Trust, Federated Government Trust, Federated High Yield Trust, Federated Income Securities Trust, Federated Income Trust, Federated Index Trust, Federated Institutional Trust, Federated Insurance Series, Federated Master Trust, Federated Municipal Trust, Federated Short-Term Municipal Trust, Federated Short-Term U.S. Government Trust, Federated Stock Trust, Federated Tax-Free Trust, Federated U.S. Government Bond Fund, Federated U.S. Government Securities Fund: 1–3 Years, Federated U.S. Government Securities Fund: 2–5 Years, Federated U.S. Government Securities Fund: 5–10 Years, Intermediate Municipal Trust, Managed Series Trust, Money Market Obligations Trust, Money Market Obligations Trust II, Money Market Trust, Municipal Securities Income Trust, Cash Trust Series, Inc., Federated Adjustable Rate U.S. Government Fund, Inc., Federated American Leaders Fund, Inc., Federated Equity Income Fund, Inc., Federated Fund for U.S. Government Securities, Inc., Federated Government Income Securities, Inc., Federated High Income Bond Fund, Inc., Federated Municipal Opportunities Fund, Inc., Federated Municipal Securities Fund, Inc., Federated Stock and Bond Fund, Inc., Federated Total Return Series, Inc., Federated Utility Fund, Inc., Fixed Income Securities, Inc., International Series, Inc., Investment Series Funds, Inc., Liberty U.S. Government Money Market Trust, Liquid Cash Trust, Money Market Management, Inc., Tax-Free Instruments Trust, Trust for Government Cash Reserves, Trust for Short-Term U.S. Government Securities, Trust for U.S. Treasury Obligations and World Investment Series, Inc., and all other registered open-end management investment companies and series thereof that are advised or subadvised by Federated or a person controlling, controlled by, or under common control with Federated, and all other registered open-end management investment companies and series thereof for which the Advisers in the future act as investment adviser or subadviser other than funds which are not sponsored by Federated (collectively, the ''Funds'').

FILING DATES: The application was filed on July 29, 1999. Applicants have agreed to file an amendment, the substance of which is reflected in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 8, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service.

Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, 5800 Corporate Drive, Pittsburgh, PA 15237.

FOR FURTHER INFORMATION CONTACT: Susan K. Pascocello, Senior Counsel, at (202) 942–0654, or Michael W. Mundt, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Each Fund is registered under the Act as an open-end management investment company and is organized either as a Maryland corporation or a Massachusetts business trust. Additional Funds may be added in the future.[1] The Advisers are registered under the Investment Advisers Act of 1940 and serve as investment advisers to the Funds. Each Fund has entered into an investment advisory agreement with its Adviser under which the Adviser exercises discretionary authority to purchase and sell securities for the Funds.

2. Some Funds may lend money to banks or other entities by entering into repurchase agreements or purchasing other short-term instruments. Other Funds may borrow money from the same or other banks for temporary purposes to satisfy redemption requests or to cover unanticipated cash shortfalls such as a trade ''fail'' in which cash payment for a portfolio security sold by a Fund has been delayed. Currently, certain Funds have credit arrangements with their custodian (i.e., overdraft protection), and certain Funds are establishing lines of credit with a bank under which the bank may, but is not obligated to, lend money to the Funds to meet the Funds' temporary cash needs.

3. If the Funds were to borrow money from any bank under their current arrangements or under other credit arrangements, the Funds would pay interest on the borrowed cash at a rate which would be significantly higher than the rate that would be earned by other (non-borrowing) Funds on investments in repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants believe this differential represents the bank's profit for serving as a middleman between a borrower and lender. Other bank loan arrangements, such as committed lines of credit, would require the Funds to pay substantial commitment fees in addition to the interest rate to be paid by the borrowing Fund.

4. Applicants request an order that would permit the Funds to enter into lending agreements (''Interfund Lending Agreements'') under which the Funds would lend and borrow money for temporary purposes directly to and from each other through a credit facility (''Interfund Loan''). Applicants believe that the proposed credit facility would substantially reduce the Funds' potential borrowing costs and enhance their ability to earn higher rates of interest on short-term loans. Although the proposed credit facility would substantially reduce the Funds' needs to borrow from banks, the Funds would be free to establish committed lines of credit or other borrowing arrangements with banks. Certain Funds also would continue to maintain overdraft protection currently provided by their custodian.

5. Applicants anticipate that the credit facility would provide a borrowing Fund with significant savings when the cash position of the Fund is insufficient to meet temporary cash requirements. This situation would arise when redemptions exceed anticipated volumes and certain Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, which normally are affected immediately, they often do not receive payment in settlement for up to three days (or longer for certain foreign transactions). The credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. Applicants also propose using the credit facility when a sale of securities fails due to circumstances such as a delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the transaction. Sales fails may present a cash shortfall if the Fund has undertaken to purchase a security with the proceeds from securities sold. When the Fund experiences a cash shortfall due to a sales fail, the custodian typically extends temporary credit to cover the shortfall and the Fund incurs overdraft charges. Alternatively the Fund could fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or sell a security on a same day settlement basis, earning a lower return on the investment. Use of the credit facility under these circumstances would enable the Fund to have access to immediate short-term liquidity without incurring custodian overdraft or other charges.

7. While borrowing arrangements with banks will continue to be available to cover unanticipated redemptions and sales fails, under the proposed credit facility a borrowing Fund would pay lower interest rates than those offered by banks on short-term loans. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements. Thus applicants believe that the proposed credit facility would benefit both borrowing and lending Funds.

8. The interest rate charged to the Funds on any Interfund Loan (the ''Interfund Loan Rate'') would be the average of the ''Repo Rate'' and the ''Bank Loan Rate,'' both as defined below. The Repo Rate for any day would be the highest rate available to the Funds from investments in overnight repurchase agreements. The Bank Loan Rate for any day would be calculated by Federated on each day an Interfund Loan is made according to a formula established by the directors or trustees of each Fund (the ''Directors'') designed to approximate the lowest interest rate at which bank short-term loans would be available to the Funds. The formula would be based upon a publicly available rate (e.g., Federal Funds plus 50 basis points) and would vary with this rate so as to reflect changing bank loan rates. Each Fund's Directors periodically would review the continuing appropriateness of using the publicly available rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds. The initial formula and any subsequent modifications to the formula would be subject to the approval of each Fund's Directors.

9. The credit facility would be administered by Federated's fund treasury department (the ''Credit Facility Team''). Under the proposed credit facility, the portfolio managers for each participating Fund could provide standing instructions to participate

[1] All existing Funds that currently intend to rely on the order have been named as applicants, and any other existing or future Fund that may rely on the order will comply with the terms and conditions in the application.

daily as a borrower or lender. The Credit Facility Team on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds from the Funds' custodian. Once it has determined the aggregate amount of cash available for loans and borrowing demand, the Credit Facility Team would allocate loans among borrowing Funds without any further communication from portfolio managers. Applicants expect far more available uninvested cash each day than borrowing demand. After the Credit Facility Team has allocated cash for Interfund Loans, the Advisers will invest any remaining cash in accordance with their normal practice. The money market Funds typically would not participate as borrowers because they rarely need to borrow cash to meet redemptions.

10. The Credit Facility Team would allocate borrowing demand and cash available for lending among the Funds on what the Credit Facility Team believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction.

11. Federated would (i) monitor the interest rates charged and the other terms and conditions of the loans, (ii) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations, (iii) ensure equitable treatment of each Fund, and (iv) make quarterly reports to the Directors concerning any transactions by the Fund under the credit facility and the interest rates charged. The method of allocation and related administrative procedures would be approved by each Fund's Directors, including a majority of Directors who are not ''interested persons'' of the Fund, as defined in section 2(a)(19) of the Act (''Independent Directors''), to ensure that both borrowing and lending Funds participate on an equitable basis.

12. Federated would administer the credit facility as part of its duties under the existing management or advisory or service contract with each Fund and would receive no additional fee as compensation for its services. Federated or companies affiliated with it may collect standard pricing, recordkeeping, bookkeeping, and accounting fees applicable to repurchase and lending transactions generally, including transactions effected through the credit facility. Fees would be no higher than those applicable for comparable bank loan transactions.

13. Each Fund's participation in the proposed credit facility will be consistent with its organizational documents and its investment policies and limitations. All Interfund Loans will be consistent with each Fund's participation in Interfund Lending Agreements will be disclosed in the Fund's prospectus or statement of additional information prior to the commencement of the arrangement and at all times during the pendency of Interfund Loans. No Fund may participate in the credit facility unless: (i) The Fund has obtained shareholder approval for its participation, or, if such approval is not required by law, upon receipt of requisite regulatory approval, the Fund's prospectus and/or statement of additional information have disclosed at all times following the issuance of the requested order the possibility of the Fund's participation in the credit facility; and (ii) the Fund has fully disclosed all material information concerning the credit facility in its prospectus and/or statement of additional information. No Fund will borrow more than the lesser of the amount permitted by section 18 of the Act or the amount permitted by its investment limitations. No Fund may lend to another Fund through the credit facility if the loan would cause its aggregate loans through the credit facility to exceed 15% of its net assets at the time of the loan, and a Fund's Interfund Loans to any one Fund's may not exceed 5% of the lending Fund's net assets.

14. In connection with the credit facility, applicants request an order under (i) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (ii) section 12(d)(1(J) of the Act granting relief from section 12(d)(1) of the Act; (iii) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; and (iv) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

Applicants' Legal Analysis

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines an ''affiliated person'' of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having a common investment adviser and because of the overlap of Directors and officers of the Funds.

2. Section 6(c) provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a person with strong potential adverse interests to and some influence over the investment decisions of a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of that person and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because (i) Federated would administer the program as a disinterested fiduciary; (ii) all Interfund Loans would consist only of uninvested cash reserves that the Fund otherwise would invest in short-term repurchase agreements or other stock-term instruments; (iii) the Interfund Loans would not involve a greater risk than other similar investments; (iv) the lending Fund would receive interest at a rate higher than it could obtain through other similar investments; and (v) the borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions in the application would effectively preclude the

possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants believe that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extend such exception is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b) and 12(d)(1) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there would be no duplicative costs or fees to the Funds or shareholders, and that Federated would receive no additional compensation for its services in administering the credit facility. Applicants also note that the purpose of the proposed credit facility is to provide economic benefits for all the participating Funds.

6. Section 18(f)(1) prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank, if immediately after the borrowing, there is an asset coverage of at least 300 per cent for all borrowings of the company. Under section 18(g) of the Act, the term ''senior security'' includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief from section 18(f)(1) to the limited extent necessary to implement the credit facility (because the lending Funds are not banks).

7. Applicants believe that granting relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined credit facility and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) and rule 17d–1 generally prohibit any affiliated person of a registered investment company, or affiliated person of an affiliated person, when acting as principal, from effecting any joint transaction in which the company participates unless the transaction is approved by the SEC. Rule 17d–1 provides that in passing upon applications for exemptive relief from section 17(d), the SEC will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to investment company insiders. Applicants believe that the credit facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants therefore believe that each Fund's participation in the credit facility will be on terms which are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The interest rates to be charged to the Funds under the credit facility will be the average of the Repo Rate and the Bank Loan Rate, adjusted daily.

2. On each business day, Federated will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is (a) more favorable to the lending Fund than the Repo Rate, and (b) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the Fund (a) will be at an interest rate equal to or lower than any outstanding bank loan, (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral, (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days), and (d) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the credit facility if its outstanding borrowings from all sources immediately after the interfund borrowing total 10% or less of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the credit facility on a secured basis only. A Fund may not borrow through the credit facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would be more than 33⅓% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceeds 10% of its total assets for any other reason (such as decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter: (a) Repay all its outstanding Interfund Loans, (b) reduce its outstanding indebtedness to 10% or less of its total assets, or (c) secure each outstanding Interfund Loan by the

pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition (5) shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceeds 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the loan.

6. No Fund may lend to another Fund through the credit facility if the loan would cause its aggregate outstanding loans through the credit facility to exceed 15% of its net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

10. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents. A Fund's borrowings through the credit facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions and 102% of sales fails for the preceding seven calendar days.

11. Federated's Credit Facility Team will calculate total Fund borrowing and lending demand through the credit facility, and allocate loans on an equitable basis among the Funds without the intervention of any portfolio manager of the Funds. The Credit Facility Team will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. The Advisers will invest any amounts remaining after satisfaction of borrowing demand in accordance with their normal practice.

12. Federated will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Directors concerning the participation of the Funds in the credit facility and the terms and other conditions of any extensions of credit under the facility.

13. The Directors of each Fund, including a majority of the Independent Directors: (a) Will review no less frequently than quarterly the Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting the transactions; (b) will establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula; and (c) will review no less frequently than annually the continuing appropriateness of the Fund's participation in the credit facility.

14. In the event an Interfund Loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, Federated will promptly refer the loan for arbitration to an independent arbitrator selected by the Directors of any fund involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.[2] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Directors setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

15. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity, and the rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and bank borrowings, and such other information presented to the Fund's Directors in connection with the review required by conditions 12 and 13.

[2] If the dispute involves Funds with separate Boards of Directors, the Directors of each Fund will select an independent arbitrator that is satisfactory to each Fund.

16. Federated will prepare and submit to the Directors for review an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the commencement of operations of the credit facility, Federated will report on the operations of the credit facility at the Directors' quarterly meetings.

In addition, for two years following the commencement of the credit facility, an independent public accountant for each Fund shall prepare an annual report that evaluates Federated's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and it shall be filed pursuant to Item 77Q3 of Form N–SAR. In particular, the report shall address procedures designed to achieve the following objectives: (a) That the Interfund Rate will be higher than the Repo Rate, but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the application; (c) compliance with the percentage limitations on interfund borrowing and lending: (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Directors; and (e) that the interest rate on any Interfund Loan does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan.

After the final report is filed, the Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

17. No Fund will participate in the credit facility upon receipt of requisite regulatory approval unless it has fully disclosed in its statement of additional information all material facts about its intended participation.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–27643 Filed 10–21–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42010; File No. SR–Amex–99–35]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC to Rescind Exchange Rule 106

October 14, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 1, 1999, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to rescind Exchange Rule 106, ''Substitute Principal,'' in its entirety. The Exchange believes that Rule 106 no longer serves any purpose and may allow parties to Exchange contracts to break trades without appropriate justification. The text of the proposed rule change is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Items IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 106 currently provides that: ''No party to a contract shall be compelled to accept a substitute principal unless the name proposed to be substituted was declared in, and as part of, the bid or offer giving rise to the contract.'' Although the Exchange traces Rule 106 back to the 1921 Constitution of the New York Curb Market,[3] a predecessor of the Exchange, the Exchange could not determine the original purposes of Rule 106. While the original rationale underlying Rule 106 is unknown, an exchange member recently invoked Rule 106 to attempt to renege on a contract when the member's counterparty initially provided an incorrect give-up, and later sought to correct the error by substituting the name of the correct clearing member.

The Exchange believes that Rule 106 is an artifact of another era and no longer serves any useful purpose in view of modern comparison and settlement facilities. The Exchange further believes that the substitution of the National Securities Clearing Corporation as the contraside to every compared trade and the clearing corporation guarantee obviate any former need that Exchange members may have had to maintain control overtrading counterparties. Because Rule 106 may have the pernicious effect of permitting parties to Exchange contracts to break trades without appropriate justification, the Exchange believes that Rule 106 should be deleted in its entirety.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5),[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on 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 Exchange 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, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. 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. 20549–0609. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Annex–99–35 and should be submitted by November 12, 1999.

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

[3] Section 7 of Article XXIV of the 1921 Constitution of the New York Curb Market stated: ''No party to a contract shall be compelled to accept a substitute principal, unless the name proposed to be substituted shall be declared in making the offer and as a party thereof.''

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–27603 Filed 10–21–99 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42013; File No. SR–DTC–99–11]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to Liability With Respect to Affiliated Entities

October 15, 1999.

On May 12, 1999, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–DTC–99–11) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] Notice of the proposal was published in the **Federal Register** on August 3, 1999.[2] On August 9. 1999, DTC amended the proposed rule change.[3] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The Boards of Directors of DTC and the National Securities Clearing Corporation (''NSCC'') have initiated a plan to integrate DTC and NSCC. As a step in the integration plan, a holding company has been established which will own DTC and NSCC as operating subsidiaries.[4] DTC has informed the Commission that a consideration in the DTC/NSCC integration plan is to insulate DTC and NSCC from the risks and obligations of the other.

The rule change adds a new section 7 to DTC Rule 2 to provide that notwithstanding any affiliation between DTC and any other entity, including any clearing agency, except as otherwise expressly provided by written agreement: (1) DTC shall not be liable for any obligations of such other entity; (2) the participants fund or other assets of DTC shall not be available to such other entity; (3) such other entity shall not be liable for any obligations of DTC; and (4) any assets of such other entity shall not be available to DTC. The Commission has approved similar revisions to NSCC's rules.[5]

As a separate matter, DTC's rules currently provide that if it were to cease providing some or all of its services, DTC's participants fund would be available to cover any DTC wind down costs not otherwise defrayed by service fees or other available resources. The rule change amends Section 1 of DTC Rule 4 to make it clear that the required funds deposits of participants would be increased if necessary to cover such costs.

II. Discussion

Section 17A(b)(3)(F) of the Act[6] requires that the rules of a clearing agency assure the safeguarding of securities and funds which are in the custody of control of the clearing agency or for which it is responsible. The Commission believes that the proposed rule change is consistent with DTC's obligations under Section 17A(b)(3)(F) because it should ensure that DTC's assets, including it participants fund, are not diminished as a result of its affiliation with NSCC. In addition, the proposed rule change should ensure that DTC would have available to it funds sufficient to cover its costs if it were to voluntarily cease operations. This should help to ensure that any voluntary liquidation of DTC would be carried out in an orderly manner.

III. Conclusion

On the basis of the foregoing, the Commission finds that DTC's proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–99–11) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–27600 Filed 10–21–99; 8:45 am]

BILLING CODE 8010–01–M

---

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 41663 (July 27, 1999), 64 FR 42157.

[3] The amendment represented technical amendments to the proposed rule change and as such did not require republication of notice.

[4] For a description of the holding company structure, refer to Securities Exchange Act Release No. 41786 (August 24, 1999), 64 FR 47882 [File No. SR–DTC–99–17].

[5] Securities Exchange Act Release No. 42014 (October 15, 1999), [File No. SR–NSCC–99–07]

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42020; File No. SR–DTC–99–21]

Self-Regulatory Organizations; The Depository Trust Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Charges

October 15, 1999.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on September 29, 1999, The Depository Trust Corporation (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change revises DTC's fee schedule to add a fee for training customers on DTC's TradeSuite® software at the customer's office.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish fees for training customers at the customers' sites on DTC's TradeSuite® software.[3] DTC's windows-based TradeSuite software is available for investment managers,

---

[1] 15 U.S.C. § 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] The TradeSuite® training fee will be $650 for the first training day at the customer's site and $350 for each subsequent training day at the customer's site.

broker-dealers, and custodians. The software enables them to utilize various features of the DTC TradeSuite family of products. The proposed fees are designed to recover DTC's estimated service costs and will be effective October 1, 1999.

The proposed rule change is consistent with the requirements of the Act[4] and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among DTC's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impact or impose a burden on competition that is necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments on the proposed rule change were solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[5] of the Act and pursuant to Rule 19b–4(f)(2)[6] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by DTC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. 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, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at DTC's principal office. All submissions should refer to File No. SR–DTC–99–21 and should be submitted by November 12, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–27606 Filed 10–21–99; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. § 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(e)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42016; File No. SR–EMCC–99–10]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to the Requirements for a Class I, II, or III Director

October 15, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 24, 1999, the Emerging Markets Clearing Corporation (''EMCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by EMCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will delay the implementation of certain requirements for Class I, II, and III directors.

[1] 15 U.S.C.. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC 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. EMCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

EMCC's by-laws currently provide that from and after the 1999 annual meeting of shareholders, individuals elected to Class I, II, or III directorships must be an officer or partner of a shareholder or of an affiliate or subsidiary of a shareholder.[3] Similarly, EMCC's amended and restated shareholder agreement provides that from and after the 1999 annual meeting, directors elected to these classes must be an officer or partner of a ''participant shareholder'' (*i.e.*, a shareholder that is also an EMCC participant) or of an affiliate of a participant shareholder.[4]

The purpose of the proposed rule change is to amend the by-laws and the amended and restated shareholder agreement to postpone the effectiveness of these requirements until the 2000 annual meeting of shareholders. According to EMCC, its membership is not yet as large as its management had anticipated, and there are a number of shareholders and other industry participants who have not yet completed either applying for membership or acquiring EMCC shares. EMCC believes it is important to continue its developmental momentum and at the same time to maintain the continuing broad-based representation of industry participants on the EMCC Board.

In addition, when EMCC was originally organized, it was expected that an entity that became a shareholder would also be the participant. As EMCC's business has developed while the financial services industry continues to consolidate, participants have indicated that they may prefer that the shareholder and the participant be

[2] The Commission has modified the text of the summaries prepared by EMCC.

[3] Article II, Section 2.2 of the by-laws.

[4] Section 1(A) of the amended and restated shareholder agreement.

affiliated but different entities. This flexibility would not adversely impact EMCC's operations, and it should not impact the participant's ability to be represented on the EMCC Board. Thus, the proposed rule change will amend the definition of participant shareholder to mean a shareholder that holds one or more Class A subject shares and is also a participant or an affiliate of a participant.

EMCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder applicable to EMCC because it permits EMCC's Board of Directors to continue to maintain broad representation of both EMCC's participants and the emerging market debt industry and thus allows EMCC to assure fair representation of its shareholders and participants.

(B) Self-Regulatory Organization's Statement of Burden on Competition

EMCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. EMCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such 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, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. 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 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 also will be available for inspection and copying at the principal office of EMCC. All submissions should refer to File No. SR–EMCC–99–10 and should be submitted by November 12, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–27605 Filed 10–21–99; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78q–1.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42005; File No. SR–MBSCC–99–06]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Market Margin Differential Deposits

October 13, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 14, 1999, the MBS Clearing Corporation (''MBSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–MBCC–99–06) as described in Items I, II, and III below, which items have been prepared primarily by MBSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends the formula MBSCC uses to calculate market margin differential deposits.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC 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. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend the formula MBSCC uses to calculate market margin differential deposits to the participants fund.[3] Specifically, the proposed rule change adds net position and net-out position components to the market margin differential deposit formula.

Article IV, Rule 2, Section 4 of MBSCC's rules sets forth the formula used to calculate a participant's daily market margin differential deposit to the participants fund. This formula currently requires a participant to make a daily market margin differential deposit to the participants fund equal to the sum of: (a) 130% (or such other percentage of MBSCC from time to time may determine) of adjusted net losses, plus (b) 100% (or such other percentage as MBSCC from time to time may determine) of certain projected cash settlement obligations owed to MBSCC, minus (c) the amount of any market margin differential deposits previously made by the participant to and remaining in the participants fund.

The proposed rule change replaces the 130% of adjusted net losses component as contained in subsection (a) of the formula with 130% (or such other percentage of MBSCC from time to time may determine) of the greater of: (i) adjusted net losses or (ii) 25 basic points

[2] The Commission has modified the text of the summaries prepared by MBSCC.

[3] MBSCC requires participants to maintain collateral in the form of deposits to the participants fund. Each participant's participants fund is comprised of a basic deposit, a minimum market margin differential deposit, and a market margin differential deposit. The basic deposit is equal to a minimum of $1,000 and a maximum of $10,000 with the actual amount determined based on the average six months billing for the participant. The minimum market margin differential deposit is equal to $250,000. The market margin differential deposit is based on the formula set forth in Article IV, Rule 2, Section 4 of MBSCC's rules and is the subject of this rule filing.

(or such other number of basic points as MBSCC from time to time may determine) of net position and 25 basic points (or such other number of basic points as MBSCC from time to time may determine) of the largest outstanding net-out position minus excess profits from forward transactions.

The proposed rule change establishes a baseline margin requirement for net position and net-out position risk as illustrated by the following two examples. The first circumstance arises where a participant is not subject to a margin call on a particular day because it does not have adjusted net losses. The 130% multiplier, which is designed to address market volatility, is not effective if the participant does not have adjusted net losses. The net position component, therefore, should address the circumstance where a participant does not have adjusted net losses but has a large net position and there is market volatility between margin calls.

The second circumstance relates to the fact that losses of non-original contra-sides in excess of an insolvent participant's participant fund are prorated to and assessments are made against the insolvent participant's original contra-sides. MBSCC's netting system pairs-off and nets-out buy and sell trades with original and non-original contra-sides. Netting substantially reduces the number of trades requiring clearance. Although netting eliminates the need to clear net-out trades, it does not eliminate the potential liability for pro-rata assessments against original contra-sides. The participants fund, however, currently does not include a margin component for potential pro-rata assessments against original contra-sides. The net-out component, therefore, should address the circumstance where an original contra-side nets-out of transactions and otherwise does not have sufficient deposits to the participants fund to satisfy potential pro-rata assessments.

The new requirement is initially set at 25 basis points of net position and 25 basis points of largest outstanding net-out position. MBSCC has determined that 25 basis points and crediting excess profits from forward transactions is currently appropriate based on an assessment of participants' participants fund deposits.

The proposed rule change also modifies Article I, Rule 1 of MBSCC's rules to add definitions of the terms ''Excess Profits from Forward Transactions'' and ''Net Position.''

MBSCC believes that the proposed rule change is consistent with the requirements of the Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder because the proposal should help MBSCC assure the safeguarding of securities and funds which are in the custody or control of MBSCC or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will have an impact on or impose a 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 relating to the proposed rule change have been solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 MBSCC 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, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. 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, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR–MBSCC–99–06 and should be submitted by November 12, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–27602 Filed 10–21–99; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42014; File No. SR–NSCC–99–07]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to Liability With Respect to Affiliated Entities

October 15, 1999.

On May 13, 1999, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–NSCC–99–07) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on August 3, 1999.[2] On August 10, 1999, NSCC amended the proposed rule change.[3] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The Boards of Directors of NSCC and The Depository Trust Company (''DTC'') have initiated a plan to integrate NSCC and DTC. As a step in the integration plan, a holding company has been established which will own NSCC and DTC as operating subsidiaries.[4] NSCC has informed the Commission that a consideration in the NSCC/DTC integration plan is to insulate NSCC and DTC from the risks and obligations of the other.

The rule change adopts NSCC Rule 58, which provides that

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 41662 (July 27, 1999), 64 FR 42160.

[3] The amendment represented technical amendments to the proposed rule change and as such did not require republication of notice.

[4] For a description of the holding company structure, refer to Securities Exchange Act Release No. 41800 (August 27, 1999), 64 FR 48694 [File No. SR–NSCC–99–10].

notwithstanding any affiliation between NSCC and any other entity, including any clearing agency, except as otherwise expressly provided by written agreement: (1) NSCC shall not be liable for any obligations of such other entity; (2) the participants fund or other assets of NSCC shall not be available to such other entity; (3) such other entity shall not be liable for any obligations of NSCC; and (4) any assets of such other entity shall not be available to NSCC. The Commission has approved similar revisions to DTC's rules.[5]

II. Discussion

Section 17A(b)(3)(F) of the Act[6] requires that the rules of a clearing agency assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that the proposed rule change is consistent with NSCC's obligations under Section 17A(b)(3)(F) because it should ensure that NSCC's assets, including its clearing fund, are not diminished as a result of its affiliation with DTC.

III. Conclusion

On the basis of the foregoing, the Commission finds that NSCC's proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–99–07) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–27599 Filed 10–21–99; 8:45 am]

BILLING CODE 8010–01–M

[5] Securities Exchange Act Release No. 42013 (October 15, 1999) [File No. SR–DTC–99–11].

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42011; File No. SR–NYSE–99–03]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 by the New York Stock Exchange, Inc. Relating to NYSE Rule 431

October 14, 1999.

1. Introduction

On January 27, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'),[1] and rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE rule 431, ''Margin Requirements,'' to revise the margin requirements for stock options and stock index options. The proposed rule change was published for comment in the **Federal Register** on March 19, 1999.[3] The Commission received 16 comment letters regarding the proposal.[4]

The NYSE filed Amendment No. 1 to the proposal on August 11, 1999,[5] and Amendment No. 2 to the proposal on September 3, 1999.[6] This order approves the proposed rule change and grants accelerated approval to Amendment Nos. 1 and 2.

II. Description of the Proposal

A. Background

Until several years ago, the margin requirements governing listed options[7] were set forth in Regulation T, ''Credit by Brokers and Dealers.''[8] However, Federal Reserve Board amendments to Regulation T that became effective on June 1, 1997, modified or deleted certain margin requirements regarding options transactions in favor of rules to be adopted by the options exchanges, subject to approval by the Commission.[9]

In April 1996, the Exchange established NYSE Rule 431 Committee

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41168 (March 12, 1999), 64 FR 13620.

[4] *See* letter from William J. Brodsky, Chairman and Chief Executive Officer, CBOE, to Jonathan G. Katz, Secretary, Commission, dated April 1, 1999 (''CBOE Letter''); letter from Jack L. Hansen, Senior Portfolio Manager and Principal, The Clifton Group, to Jonathan Katz, Secretary, Commission, dated March 29, 1999 (''Clifton Letter''); letter from Ronald M. Egalka, President and CEO, Rampart Investment Management, to Jonathan G. Katz, Secretary, Commission, dated March 31, 1999 (''Rampart Letter''); letter from Robert C. Sheehan, President, Robert C. Sheehan and Associates, to Jonathan Katz, Secretary, SEC, dated March 26, 1999 (''Sheehan Letter''); letter from Alvin Wilkinson to Jonathan G. Katz, Secretary, Commission, dated March 25, 1999 (''Wilkinson Letter''); letter from Stewart E. Winner, First Vice President, Director, Retail Options, Prudential Securities Inc., to Jonathan Katz, Secretary, SEC, dated March 30, 1999 (''Prudential Letter'') letter from Jeffrey T. Kaufmann, Lakeshore Securities L.P., to Jonathan Katz, Secretary, SEC, dated March 26, 1999 (''Lakeshore Letter''); letter from Gary Alan DeWaal, Executive Vice President and General Counsel, FIMAT USA, to Jonathan Katz, Secretary, SEC, dated April 8, 1999 (''FIMAT Letter''); letter from Leslie C. Quick, III, President, U.S. Clearing Corp., to Jonathan G. Katz, Secretary, SEC dated April 7, 1999 (''U.S. Clearing Letter''); letter from William C. Floersch, President and CEO, O'Connor & Company, to Jonathan G. Katz, Secretary, SEC, dated April 5, 1999 (''O'Connor Letter''); letter from Jeffrey S. Alexander, Vice President and Senior Counsel, Office of the General Counsel, Merrill Lynch, to Jonathan Katz, Secretary, SEC, dated April 8, 1999 (''Merrill Lynch Letter''), letter from Lon Gorman, Executive Vice President, Charles Schwab, to Jonathan G. Katz, Secretary, SEC, dated April 13, 1999 (''Schwab Letter''); letter from Robin Roger, Principal and Counsel, Morgan Stanley Dean Witter, to Jonathan G. Katz, Secretary SEC, dated April 16, 1999 (''Morgan Stanley Letter''); letter from R. Allan Martin, Empire Programs, Inc., to Jonathan Katz, Secretary, SEC, dated May 12, 1999 (''Empire Letter''); letter from Kevin Wiseman, Chairman of the Rules and Regulations Committee, Credit Division, Securities Industry Association (''SIA''), to Margaret H. McFarland, Deputy Secretary, SEC, dated June 15, 1999 (''SIA Letter''); and letter from George Brunelle to Jonathan Katz, Secretary, SEC, dated July 1, 1999 (''Brunelle Letter'').

[5] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard C. Strasser, Assistant Director, Division of Market Regulation (''Divison''), Commission, dated August 10, 1999 (''Amendment No. 1''). Amendment No. 1 revises the proposal to: (1) Provide that the minimum margin requirement for a short put on a listed option will be the current value of the put plus a specified percentage of the put option's exercise price; (2) provide that the minimum margin requirement for a short put on an over-the-counter (''OTC'') option will be a specified percentage of the put's exercise price; (3) clarify that the proposal does not provide loan value for long-term foreign currency options (''FCOs''); (4) provide examples demonstrating the operation of the proposed rule in connection with various options strategies, including long box spreads, hedged puts and calls, conversions, reverse conversions, and collars; and (5) makes a technical correction to the text of the proposed rule.

[6] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard C. Strasser, Assistant Director, Division, Commission, dated September 3, 1999 (''Amendment No. 2''). Amendment No. 2 responds to the Brunelle Letter and revises the proposal to provide that butterfly and box spreads carried in the cash account must be comprised of listed options or must be guaranteed by the carrying broker-dealer.

[7] The Options Clearing Corporation (''OCC'') issues listed options.

[8] 12 CFR 220 *et seq.* The Board of Governors of the Federal Reserve System (''Federal Reserve Board'') issued Regulation T pursuant to the Act.

[9] *See* Board of Governors of the Federal Reserve System Docket No. R–0772 (April 24, 1996), 61 FR 20386 (May 6, 1996) (permitting the adoption of margin requirements ''deemed appropriate by the exchange that trades the option, subject to the approval of the Securities and Exchange Commission'').

(''431 Committee'') to review the Exchange's margin requirements. The 431 Committee is comprised of industry representatives with diverse areas of expertise. The 431 Committee created various subcommittees, including an Options Subcommittee (''Options Subcommittee''), to review specific areas of NYSE Rule 431 and make recommendations to the Exchange in light of the changes in federal margin regulations and changing industry conditions. The Options subcommittee reviewed NYSE Rule 431 and recommended changes relating to the margin treatment of options. The proposed amendments to NYSE Rule 431 are substantially identical to amendments made in a proposal filed by the Chicago Board Options Exchange, Inc. (''CBOE'', which the Commission recently approved.[10]

Specifically, the NYSE proposes to amend NYSE Rule 431 to: (1) Permit the extension of credit on certain listed and over-the-counter (''OTC'') options with over nine months until expiration and on certain long box spreads; (2) recognize butterfly and box spreads as strategies for purposes of margin treatment and establish margin requirements for them; (3) recognize various strategies involving stocks (or other underlying instruments) paired with long options, and provide for lower maintenance margin requirements on such hedged stock positions; (4) expand the types of short options positions that will be considered ''covered'' in a cash account to include certain short positions that are components of limited risk spread strategies (*e.g.,* butterfuly and box spreads); and (5) allow an escrow agreement that conforms to NYSE standards to serve in lieu of cash for certain spread positions held in a cash account. In addition, the proposal revises the margin requirement for short put options to provide that: (1) The Minimum margin requirement for a short put on a listed option will be the current value of the put plus a specified percentage of the put option's exercise price; and (2) the minimum margin requirement for a short put on an OTC option will be a specified percentage of the put's exercise price.[11]

B. Definitions

Currently, NYSE Rule 431 defines the ''current market value'' or ''current market price'' of an option, currency warrant, currency index warrant, or stock index warrant as the total cost or net proceeds of the option contract or warrant on the day it was purchased or sold. The NYSE proposes to revise the definition to indicate that the current market value of current market price of an option, currency warrant, currency index warrant, or stock index warrant are as defined in Section 220.2 of Regulation T.

The Exchange also proposed to establish definitions for ''butterfly spread'' [12] and ''box spread''[13] options strategies. The definitions are important elements of the Exchange's proposal to recognize and specify cash and margin account requirements for butterfly and box spreads. The definitions will specify what multiple option positions, if held together, qualify for classification as butterfly or box spreads, and consequently are eligible for the proposed cash and margin treatment.

Finally, the NYSE proposes to define as ''escrow agreement,'' when used in connection with cash settled calls, puts, currency warrants, currency index warrants or stock index warrants, carried short, as any agreement issued in a form acceptable to the NYSE under which a bank holding cash, cash equivalents, one or more qualified equity securities or a combination thereof is obligated (in the case of an option) to pay the creditor the exercise settlement amount in the event an option is assigned an exercise notice or, (in the case of a warrant) the funds sufficient to purchase a warrant sold short in the event of a buy-in.

C. Extension of Credit on Long Term Options and Warrants

The proposal will allow extensions of credit on certain long listed and OTC [14] options (*i.e.,* put or call options on a stock or stock index) and warrant products (*i.e.,* stock index warrants, but not traditional stock warrants issued by a corporation on its own stock.)[15] Only those options or warrants with expirations exceeding nine months (''long term'') will be eligible for credit extension.[16] For long term listed options and warrants, the proposal requires initial and maintenance margin of not less than 75% of the current market value of the option or warrant. Therefore, an NYSE member firm would be able to loan up to 25% of the current market value of a long term listed option or warrant.[17]

The proposal also permits the extension of credit on certain long term OTC options and warrants. Specifically, the proposal will allow a member firm to extend credit on an OTC put or call option on a stock or stock index, and on an OTC stock index warrant. In addition to being more than nine months from expiration, a marginable OTC option or warrant must: (1) Be in-the-money; (2) be guaranteed by the carrying broker-dealer; and (3) have an American-style exercise provision (*i.e.,* may be exercised at any time up to the day before expiration). The proposal requires initial and maintenance margin of 75% of the long term OTC option's or warrant's in-the-money amount (*i.e.* intrinsic value), plus 100% of the amount, if any, by which the current market value of the OTC option or warrant exceeds the in-the-money amount.

When the time remaining until expiration for an option or warrant (listed or OTC) on which credit has been extended reaches nine months, the maintenance margin requirement will become 100% of the current market value. Thus, options or warrants expiring in less than nine months would have no loan value under the proposal. Options or warrants with less than nine

[10] *See* Securities Exchange Act Release No. 41658 (July 27, 1999), 64 FR 42736 (August 5, 1999) (order approving File No. SR–CBOE–97–67) (''CBOE Approval Order'').

[11] *See* Amendment No. 1, *supra* note 5.

[12] The proposal defines ''butterfly spread'' as: [A]n aggregation of positions in three series of either put or call options all having the same underlying compound or index and time of expiration, and based on the same aggregate current underlying value, where the interval between the exercise price of each series is equal, which positions are structured as either (A) a ''long butterfly spread'' in which two short options in the same series are offset by one long option with a higher exercise price and one long option with a lower exercise price, (B) a ''short butterfly spread'' in which two long options in the same series offset one short option and with a higher exercise price and in one short option with a lower exercise price.

[13] The proposal defines ''box spread'' as: [A]n aggregation of positions in a long call option and short put option with the same exercise price (''buy side'') coupled with a long put option and short call option with the same exercise price (''sell side'') all of which have the same underlying component or index and time of expiration, and are based on the same aggregate current underlying value, and are structured as either: (A) a ''long box spread'' in which the sell side exercise price exceeds the buy side exercise price, or (B) a ''short box spread'' in which the buy side exercise price exceeds the sell side exercise price.

[14] Unlike listed options, OTC options are not issued by the OCC. OTC options and warrants are not listed or traded on a registered national securities exchange or though the automated quotation system of a registered securities association.

[15] Throughout the remainder of this approval order, the term ''warrant'' means this type of warrant.

[16] For any stock option, stock index option, or stock index warrant that expires in nine months or less, initial margin must be deposited and maintained equal to at least 100% of the current market value of the option or warrant.

[17] For example, if an investor purchased a listed call option on stock XYZ that expired in January 2001 for approximately $100 (excluding commissions), the investor would be required to deposit and maintain at least $75. The investor could borrow the remaining $25 from its broker. Under the NYSE's current margin rules, the investor would be required to pay the entire $100. *See* CBOE Approval Order, *supra* note 10, at footnote 18.

months to expiration will have no loan value because of the leverage and volatility of those instruments.[18]

D. Extension of Credit on Long Box Spread in European-Style Options

The proposal will allow the extension of credit on a long box spread comprised entirely of European-style options [19] that are listed or guaranteed by the carrying broker-dealer. A long box spread is a strategy that is composed of four option positions and is designed to lock in the ability to buy and sell the underlying component or index for a profit, even after meeting the cost of establishing the long box spread. The two exercise prices embedded in the strategy determine the buy and the sell price.[20]

For long box spreads made up of European-style options, the proposed margin requirement would equal 50% of the aggregate difference in the two exercise prices (buy and sell), which results in a requirement slightly higher than 50% of the debit typically incurred.[21] The 50% margin requirement is both an initial and maintenance margin requirement.[22] The proposal will afford a long box spread a market value for margin equity purposes of not more than 100% of the aggregate difference in exercise prices.

E. Cash Account Treatment of Butterfly Spreads, Box Spreads, and Other Spreads

The proposal would make butterfly spreads and box spreads in cash-settled, European-style options eligible for the cash account. A butterfly spread is a pairing of two standard spreads, one bullish and one bearish. To qualify for carrying in the cash account, the butterfly spreads and box spreads must meet the specifications contained in the proposed definition section,[23] and must be comprised of options that are listed or guaranteed by the carrying broker-dealer.[24] In addition, the long options must be held in, or purchased for, the account on the same day.

For long butterfly spreads and long box spreads, the proposal would require full payment of the net debit that is incurred when the spread strategy is established. According to the NYSE, full payment of the debit incurred to establish a long butterfly or box spread will cover any potential risk to the carrying broker-dealer.[25]

Short butterfly spreads generate a credit balance when established (*i.e.*, the proceeds from the sale of short option components exceed the cost of purchasing long option components). However, in the worst case scenario where all options are exercised, a debit (loss) greater than the initial credit balance received would accrue to the account. To eliminate the risk to the broker-dealer carrying the short butterfly spread, the proposal will require that an amount equal to the maximum risk be held or deposited in the account in the form of cash or cash equivalents.[26] The maximum risk potential in a short butterfly spread comprised of call options is the aggregate difference between the two lowest exercise prices.[27] With respect to short butterfly spreads comprised of put options, the maximum risk potential is the aggregate difference between the two highest exercise prices. The net credit received from the sale of the short option components could be applied towards the requirement.

Short box spreads also generate a credit balance when established. This credit is nearly equal to total debit (loss) that, in the case of a short spread, will accrue to the account if held to expiration. The proposal will require that cash or cash equivalents covering the maximum risk, which is equal to the aggregate difference in the two exercise prices involved, be held or deposited.[28] The net credit received from the sale of the short option components may be applied towards the requirement; if applied, only a small fraction of the total requirement need to be held or deposited.[29]

In addition to butterfly spreads and box spreads, the proposal will permit investors to hold in their cash accounts other spreads made up of European-style, cash-settled stock index options or stock index warrants. A short position would be considered covered, and thus eligible for the cash account, if a long position in the same European-style, cash-settled index option or stock index warrant was held in, or purchased for, the account on the same day.[30] The long and short positions making up the spread must expire concurrently, and the long position must be paid in full. Lastly, the cash account must contain

[18] *See* Amendment No. 1, *supra* note 5.

[19] A European-style index option may be exercised only at its expiration pursuant to the rules of the OCC. *See* NYSE Rule 700(b)(19).

[20] For example, an investor might be long 1 XYZ Jan 50 Call @ 7 and short 1 XYZ Jan 50 Put @ 1 (''buy side''), and short 1 XYZ Jan 60 Call @ 2 and long 1 XYZ Jan 60 Put @ 5½ (''sell side''). As required by the Exchange's proposed definition of ''long box spread,'' the sell side exercise price exceeds the buy side exercise price. In this example, the long box spread is a riskless position because the net debit ((2+1) − (7+5½)=net debit of 9½) is less than the exercise price differential (60 − 50=10). Thus, the investor has locked in a profit of $50 (½ × 100). *See* Amendment No. 1, *supra* note 5, and CBOE Approval Order, *supra* note 10, at footnote 22.

[21] In the example appearing in the preceding footnote, the margin required (50% × (60-50) = 5) would be slightly higher than 50% of the net debit (50% × 9½ = 4¾). *See* CBOE Approval Order, *supra* note 10, at footnote 23.

[22] *See* Amendment No. 1, *supra* note 5.

[23] *See supra* notes 12 and 13.

[24] *See* Amendment No. 2, *supra* note 6.

[25] To create a long butterfly spread, which is comprised of call options, an investor may be long 1 ZYZ Jan 45 Call @ 6, short 2 Jan 50 Calls @ 3 each, and long 1 XYZ Jan 55 Call @ 1. The maximum risk for this long butterfly spread is the net debit incurred to establish the strategy ((3 + 3) − (6 + 1) = net debit of 1). Under the proposal, therefore, the investor would be required to pay the net debit, or $100 (1 × 100). *See* CBOE Approval Order, *supra* note 10, at footnote 25.

[26] An escrow agreement could be used as a substitute for cash or cash equivalents if the agreement satisfies certain criteria. For short butterfly spreads, the escrow agreement must certify that the bank holds for the account of the customer as security for the agreement (1) cash, (2) cash equivalents, or (3) a combination thereof having an aggregate market value at the time the positions are established of not less than the amount of the aggregate difference between the two lowest exercise prices with respect to short butterfly spreads comprised of call options or the aggregate difference between the two highest exercise prices with respect to short butterfly spreads comprised of put options and that the bank will promptly pay the member organization such amount in the event the account is assigned an exercise notice on the call (put) with the lowest (highest) exercise price.

[27] For example, an investor may be short 1 XYZ Jan 45 Call @ 6, long 2 XYZ Jan 50 Calls @ 3 each, and short 1 XYZ Jan 55 Call @ 1. Under the proposal, the maximum risk for this short butterfly spread, which is comprised of call options, is equal to the difference between the two lowest exercise prices (50 − 45 = 5). If the net credit received from the sale of short option components ((6 + 1) − (3 + 3) = net credit of 1) is applied, the investor is required to deposit an additional $400 (4 × 100). Otherwise, the investor would be required to deposit $500 (5 × 100). *See* CBOE Approval Order, *supra* note 10, at footnote 27.

[28] As a substitute for cash or cash equivalents, an escrow agreement could be used if it satisfies certain criteria. For short box spreads, the escrow agreement must certify that the bank holds for the account of the customer as security for the agreement (1) cash, (2) cash equivalents, or (3) a combination thereof having an aggregate market value at the time the positions are established of not less than the amount of the aggregate difference between the exercise prices, and that the bank will promptly pay the member organization such amount in the event the account is assigned an exercise notice on either short option.

[29] To create a short box spread, an investor may be short 1 XYZ Jan 60 Put @ 5½ and long 1 XYZ Jan 60 Call @ 2 (''buy side''), and short 1 XYZ Jan 50 Call @ 7 and long 1 XYZ Jan 50 Put @ 1 (''sell side''). As required by the Exchange's proposed definition of ''short box spread'' (*supra* note 12), the buy side exercise price exceeds the sell exercise price. In this example, the maximum risk for the short box spread is equal to the difference between the two exercise prices (60 − 50 = 10). If the net credit received from the sale of short option components ((5½ + 7) − (2 + 1) = net credit of 9½) is applied, the investor is required to deposit an additional $50 (½ × 100). Otherwise, the investor would be required to deposit $1,000 (10 × 100). *See* CBOE Approval Order, *supra* note 10, at footnote 29.

[30] Under the proposal, a long warrant may offset a short option contract and a long option contract may offset a short warrant provided they have the same underlying component or index and equivalent aggregate current underlying value.

cash, cash equivalents, or an escrow agreement equal to at least the aggregate exercise price differential.

F. Margin Account Treatment of Butterfly Spreads and Box Spreads

The Exchange's margin rules presently do not recognize butterfly spreads for margin purposes. Under the Exchange's current margin rules, the two spreads (bullish and bearish) that make up a butterfly spread each must be margined separately. The Exchange believes that the two spreads should be viewed in combination, and that commensurate with the lower combined risk, investor should receive the benefit of lower margin requirements.

The Exchange's proposal would recognize as a distinct strategy butterfly spreads held in margin accounts, and specify requirements that are the same as the cash account requirements for butterfly spreads.[31] Specifically, in the case of a long butterfly spread, the net debit must be paid in full. For short butterfly spreads comprised of call options, the initial and maintenance margin must equal at least the aggregate difference between the two lowest exercise prices. For short butterfly spreads comprised of put options, the initial and maintenance margin must equal at least the aggregate difference between the two highest exercise prices. The net credit received from the sale of the short option components may be applied towards the margin requirement for short butterfly spreads.

The proposed requirements for box spreads held in a margin account, where all option positions making up the box spread are listed or guaranteed by the carrying broker-dealer, also are the same as those applied to the cash account. With respect to long box spreads, where the component options are not European-style, the proposal would require full payment of the net debit that is incurred when the spread strategy is established.[32] For short box spreads held in the margin account, the proposal would require that cash or cash equivalents covering the maximum risk, which is equal to the aggregate difference in the two exercise prices involved, be deposited and maintained. The net credit received from the sale of the short option components may be applied towards the requirement. Generally, long and short box spreads would not be recognized for margin equity purposes; however, the proposal would allow loan value for one type of long box spread where all component options have a European-style exercise provision and are listed or guaranteed by the carrying broker-dealer.

G. Margin Requirement for Short Put Options

NYSE Rule 431(f)(2)(D) currently provides that the minimum required margin for a short listed put option is an amount equal to the option premium plus a percentage of the current value of the underlying instrument. The minimum required margin for a short OTC put option is an amount equal to a percentage of the current value of the underlying component. According to the NYSE, the NYSE's current rule creates a margin requirement for a short put option even when the price of the underlying instrument rises above the exercise price of the put and the risk associated with the put option has decreased because the option is out-of-the-money.[33] The NYSE proposes to amend the margin requirement for short put options to provide a minimum margin requirement more in line with the risk associated with the option. Specifically, the NYSE proposes to amend NYSE Rule 431(f)(2)(D) to provide that the minimum margin requirement for a short listed put option will be an amount equal to the current value of the option plus a percentage of the option's exercise price. The minimum margin required for a short OTC put option will be an amount equal to a specified percentage of the option's exercise price.[34]

H. Maintenance Margin Requirements for Stock Positions Held With Options Positions

The Exchange proposes to recognize, and establish reduced maintenance margin requirements for, five options strategies designed to limit the risk of a position in the underlying component. The strategies are: (1) Long Put/Long Stock; (2) Long Call/Short Stock; (3) Conversion; (4) Reverse Conversion; and (5) Collar. Although the five strategies are summarized below in terms of a stock position held in conjunction with an overlying option (or options), the proposal is structured to also apply to components that underlie index options and warrants. For example, these same maintenance margin requirements will apply when these strategies are utilized with a stock basket underlying index options or warrants. Proposed Exchange Rule 431(f)(2)(G)(v) will define the five strategies and set forth the respective maintenance margin requirements for the stock component of each strategy.[35]

1. Long Put/Long Stock

The Put/Long Stock strategy requires an investor to carry in an account a long position in the component underlying the put option, and a long put option specifying equivalent units of the underlying component. The maintenance margin requirement for the Long Put/Long Stock combination would be the lesser of: (i) 10 percent of the put option exercise price, plus 100% of any amount by which the put option is out-of-the-money; or (ii) 25% of the current market value of the long stock position.[36]

2. Long Call/Short Stock

The Long Call/Short Stock strategy requires an investor to carry in an account a short position in the component underlying the call option, and a long call option specifying equivalent units of the underlying component. For a Long Call/Short Stock combination, the maintenance margin requirement would be the lesser of: (i) 10% of the call option exercise price, plus 100% of any amount by which the call option is out-of-the-money; or (ii) the maintenance margin requirement on the short stock position as specified in NYSE Rule 431(c).[37]

[31] *See supra*, Section II.E., ''Cash Account Treatment of Butterfly Spreads, Box Spreads, and Other Spreads.'' The margin requirements would apply to butterfly spreads where all option positions are listed or guaranteed by the carrying broker-dealer.

[32] As discussed above in Section II.D., ''Extension of Credit on Long Box Spread in European-Style Options,'' the margin requirement for a long box spread made up of European-style options is 50% of the aggregate differences in the two exercise prices.

[33] *See* Amendment No. 1, *supra* note 5.

[34] *Id.*

[35] The Exchange's proposal provides maintenance margin relief for the stock component (or other underlying instrument) of the five identified strategies. A reduction in the initial margin for the stock component of these strategies is not currently possible because the 50% initial margin requirement under Regulation T continues to apply, and the Exchange does not possess the independent authority to lower the initial margin requirement for stock. *See* CBOE Approval Order, *supra* note 10, at footnote 33.

[36] For example, if an investor is long 100 shares of XYZ @ 52 and long one XYZ Jan 50 Put @ 2, the required margin would be the lesser of ((10% × 50) + (100% × 2) = 7) or (25% × 52 = 13). Therefore, the investor would be required to maintain margin equal to at least $700 (7 × 100). *See* CBOE Approval Order, *supra* note 10, at footnote 34.

[37] For each stock carried short that has a current market value of less than $5 per share, the maintenance margin is $2.50 per share or 100% of the current market value, whichever is greater. For each stock carried short that has a current market value of $5 per share or more, the maintenance margin is $5 per share of 30% or the current market value, whichever is greater. *See* NYSE Rule 431(c). For example, for an investor who is short 100 shares of XYZ @ 48 and long 1 XYZ Jan 50 Call @ 1, the required margin would be the lesser of ((10% × 50) + (100% × 2) = 7) or (30% × 48 = 14.4). Therefore, the investor would be required to maintain margin equal to at least $700 (7 × 100). *See* CBOE Approval Order, *supra* note 10, at footnote 35.

3. Conversion

A ''Conversion'' is a long stock position held in conjunction with a long put and a short call. The long put and short call must have the same expiration date and exercise price. The short call is covered by the long stock and the long put is a right to sell the stock at a predetermined price—the exercise price of the long put. Regardless of any decline in market value, the stock, in effect, is worth no less than the long put exercise price.

The Exchange's current margin regulations specify that no maintenance margin would be required on the short call option because it is covered, but the underlying long stock position would be margined according to the present maintenance margin requirement (*i.e.*, 25% of the current market value).[38] Under the proposal, the maintenance margin for a Conversion would be 10% of the exercise price.[39]

4. Reverse Conversion

A ''Reverse Conversion'' is a short stock position held in conjunction with a short put and a long call. As with the Conversion, the short put and long call must have the same expiration date and exercise price. The short put is covered by the short stock and the long call is a right to buy the stock at a predetermined price—the call exercise price. Regardless of any rise in market value, the stock can be acquired for the call exercise price; in effect, the short position is valued at not more than the call exercise price. The maintenance margin requirement for a Reverse Conversion would be 10% of the exercise price, plus any in-the-money amount (*i.e.*, the amount by which the exercise price of the short put exceeds the current market value of the underlying stock position).[40]

5. Collar

A ''Collar'' is a long stock position held in conjunction with a long put and a short call. A Collar differs from a Conversion in that the exercise price of the long put is lower than the exercise price of the short call. Therefore, the options positions in a Collar do not constitute a pure synthetic short stock position. The maintenance margin for a Collar would be the lesser of: (i) 10% of the long put exercise price, plus 100% of any amount by which the long put is out-of-the-money; or (ii) 25% of the short call exercise price.[41] Under the Exchange's current margin regulations, the stock may not be valued at more than the call exercise price.

III. Summary of Comments

The Commission received 16 comment letters regarding the proposed rule change.[42] All of the commenters generally supported the proposal. One commenter noted, for example, that the NYSE's proposal would provide additional flexibility and borrowing capabilities to clients while adequately protecting carrying broker-dealers against potential risks.[43] Another commenter maintained that the proposal will align margin treatment more closely with the risk associated with a position by permitting lower margin treatment for options strategies with a defined risk.[44] The commenter also believed that the proposal will benefit customers by providing increased flexibility and lowering costs and will ''increase the viability of listed options and the competitiveness of the options markets generally.''[45]

Noting the margin requirements for index options often are higher than the margin requirements for comparable index futures products, ten of the commenters advocated the adoption of a risk-based methodology for margining options positions.[46] One commenter asserted that some clients used index futures options rather than index options because the margin requirements for index futures options are lower and better related to the risk of the overall customer positions.[47] Another commenter, a CBOE market maker in S&P 500 Index options and a member of the CBOE's Board of Directors, stated that some market participants believe that the margin requirements for offsetting spread positions are onerous and that the current options margin requirements are a significant barrier to additional customer business.[48] A third commenter noted that listed options strategies often are disadvantaged in terms of margin treatment in comparison to comparable futures products,[49] and a fourth commenter urged the securities exchanges and regulators to modify the margin requirements for listed options to make them more comparable to the margin requirements for futures index options.[50] A fifth commenter maintained that the current margin rules preclude cross-margining between index options and futures, thereby creating artificial liquidity problems and encouraging customers to trade in the OTC market.[51]

In its comment letter, the CBOE supported the NYSE's proposal but suggested that the NYSE modify its proposal to: (1) Revise the NYSE's customer margin requirement for short equity put options to conform to the CBOE's margin requirement for short equity put options;[52] and (2) provide

[38] For example, for an investor who is long 100 shares of XYZ @ 48, long one XYZ Jan 50 Put at 2, and short one XYZ Jan 50 Call @ 1, the present maintenance margin on the long stock position would be $1,200 ((25% × 48) × 100). However, if the price of the stock increased to 60, the NYSE currently specifies that the stock may not be valued at more than the short call exercise price. Thus, the maintenance margin on the long stock position would be $1,250 ((25% × 50) × 100). The writer of the call option cannot receive the benefit (*i.e.*, greater loan value) of a market value that is above the call exercise price because, if assigned an exercise, the underlying component would be sold at the exercise price, not the market price of the long position. *See* CBOE Approval Order, *supra* note 10, at footnote 36.

[39] For the example in the preceding footnote, where the investor was long 100 shares of XYZ @ 48, long 1 XYZ Jan 50 Put @ 2, and short 1 XYZ Jan 50 Call @ 1, the proposed maintenance margin requirement for the Conversion strategy would be $500 ((10% × 50) × 100). *See* CBOE Approval Order, *supra* note 10, at footnote 37.

[40] The seller of a put option has an obligation to buy the underlying component at the put exercise price. If assigned an exercise, the underlying component would be purchased (the short position in the Reverse Conversion effectively closed) at the exercise price, even if the current market price is lower. To recognize the lower market value of a component, the short put in-the-money amount is added to the requirement. For example, an investor holding a Reverse Conversion may be short 100 shares of XYZ @ 52, long one XYZ Jan 50 Call @ 2½, and short one XYZ Jan 50 Put @ 1½. If the current market value of XYZ stock drops to 30, the maintenance margin would be $2,500 ((10% × 50) + (50–30)) × 100. *See* CBOE Approval Order, *supra* note 10, at footnote 38.

[41] To create a Collar, an investor may be long 100 shares of XYZ @ 48, long 1 XYZ Jan 45 Put @ 4, and short 1 XYZ Jan 50 Call @ 3. The maintenance margin requirement would be the lesser of ((10% × 45) + 3 = 7½) or (25% × 50 = 12½). Therefore, the investor would need to maintain at least $750 (7½ × 100) in margin. *See CBOE Approval Order, supra* note 10, at footnote 39.

[42] *See* note 4, *supra.*

[43] *See* Merrill Lynch Letter, *supra* note 4.

[44] *See* Schwab Letter, *supra* note 4.

[45] *Id.*

[46] *See* Letters from CBOE, Clifton, Rampart, Sheehan, Wilkinson, Prudential, Lakeshore, U.S. Clearing Corp., O'Connor, and Schwab, *supra* note 4. Two commenters noted that the futures market use a risk-based system for calculating margin requirements. *See* CBOE Letter and Lakeshore Letter, *supra* note 4.

[47] *See* Lakeshore Letter, *supra* note 4.

[48] The commenter alleged that margin requirement for certain S&P 500 Index options traded on the CBOE can be as much as two to 16 times greater than options on S&P 500 Index futures traded on the Chicago Mercantile Exchange. *See* Wilkinson Letter, *supra* note 4. Similarly, another commenter, who is a registered broker-dealer, asserted that some clients had complained that the margin requirement for certain low-risk index options positions (*e.g.*, boxes) is much greater than the risk of the position would indicate. *See* Sheehan Letter, *supra* note 4.

[49] *See* Schwab Letter, *supra* note 4.

[50] *See* Clifton Letter, *supra* note 4.

[51] *See* FIMAT Letter, *supra* note 4.

[52] CBOE Rule 12.3(c)(5) provides that the minimum customer margin required for a short put on a listed equity option is 100% of the current market value of the option or warrant plus 10% of the option or warrant's aggregate exercise price. For a short put on an OTC equity option, the minimum margin required under CBOE Rule 12.3(c)(5) is 10%

loan value for long term foreign currency options (''FCOs'').[53]

Another commenter asserted that the NYSE's proposed definition of a ''butterfly spread'' was ''technically inaccurate in a way which might impose unintended restrictions on the marginability of certain types of butterfly spreads.'' [54] The commenter suggested that the NYSE revise its definition of butterfly spread to account for long butterfly positions established over time and for fully offset butterfly spreads involving a different mix of strike prices and different numbers of options contracts.[55]

Finally, one commenter urged the Commission to confirm that the proposal, if approved, would not prevent an NYSE member from requiring additional margin from its customers as the member deemed necessary, including the margin required currently under NYSE Rule 431.[56] In addition, the commenter believed that, in light of the securities industry's efforts to ensure operational capacity to address year 2000 issues, NYSE members should not be required to make modifications to their internal systems that would be necessary to implement the proposed changes on an immediate basis.[57]

IV. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with the Section 6(b)(5) [58] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest. The Commission also finds that the proposal may serve to remove impediments to and perfect the mechanism of a free and open market by revising the Exchange's margin requirements to better reflect the risk of certain hedged options strategies.[59]

The Commission believes that it is appropriate for the Exchange to allow member firms to extend credit on certain long term options and warrants, and that such practice is consistent with Regulation T. In 1996, the Federal Reserve Board amended Regulation T to enable the self-regulatory organizations (''SROs'') to adopt rules permitting the margining of options.[60] The NYSE rules approved in this order, which will permit the margining of options under the grant of authority from the Federal Reserve Board, are substantially identical to CBOE rules, which the Commission recently approved.[61]

The Commission believes that it is reasonable for the Exchange to restrict the extension of credit to long term options and warrants. The Commission believes that by limiting loan value to long term options and warrants, the proposal will help to ensure that the extension of credit is backed by collateral (*i.e.*, the long term option or warrant) that has sufficient value.[62] Because the expiration dates attached to options and warrants make such securities wasting assets by nature, it is important that the Exchange restrict the extension of credit to only those options and warrants that have adequate value at the time of the purchase, and during the term of the margin loan.[63]

The Commission believes that the proposed margin requirements for eligible long term options and warrants are reasonable. For long term listed options and warrants, the proposal requires that an investor deposit and maintain margin of not less than 75% of the current market value of the option or warrant. For long term OTC options and warrants, an investor must deposit and maintain margin of not less than 75% of the long term OTC option's or warrant's in-the-money amount (*i.e.*, intrinsic value), plus 100% of the amount, if any, by which the current market value of the OTC option or warrant exceeds the in-the-money amount. The Commission notes that the proposed margin requirements are more stringent than the current Regulation T margin requirements for equity securities (*i.e.*, 50% initial margin and 25% maintenance margin).

The Commission recognizes that because current Exchange rules prohibit loan value for options, increases in the value of long term options cannot contribute to margin equity (*i.e.*, appreciated long term options cannot be used to offset losses in other positions held in a margin account). Consequently, some customers may face a margin call or liquidation for a particular position even though they concurrently hold a long term option that has appreciated sufficiently in value to obviate the need for additional margin equity. The Exchange's proposal would address this situation by allowing loan value for long term options and warrants.

The Commission believes that it is reasonable for the Exchange to afford long term options and warrants loan value because mathematical models for pricing options and evaluating their worth as loan collateral are widely recognized and understood.[64] Moreover, some creditor, such as the OCC, extend credit on options as part of their current business.[65] The Commission believes

of the option's aggregate exercise price. The SIA and Prudential also recommended that the NYSE follow the CBOE's margin requirement for short equity put options. *See* SIA Letter and Prudential Letter, *supra* note 4.

[53] After submitting its comment letter, the CBOE revised its options margin proposal to eliminate the provision allowing loan value for FCOs. *See* Letter from Mary L. Bender, Senior Vice President and Chief Regulatory Officer, Division of Regulatory Services, CBOE, to Michael A. Walinskas, Deputy Associate Director, Division, Commission, dated May 14, 1999 (Amendment No. 2 to File No. SR–CBOE–97–67). Accordingly, neither the NYSE nor the CBOE will permit loan value for FCOs.

[54] *See* Brunelle Letter, *supra* note 4.

[55] In particular, the commenter maintained that ''a long butterfly spread should be defined as an aggregate position where, if any of the short positions were assigned, the holder could exercise the appropriate long positions to cover the assignment.'' *Id.*

[56] *See* Morgan Stanley Letter, *supra* note 4.

[57] In addition, the commenter maintained that NYSE members should have the opportunity to avoid making any systems modifications after the approval of the proposal to the extent that the member elects to continue operating under the NYSE's current margin rules. *Id.*

[58] 15 U.S.C. 78f(b)(5).

[59] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78f(c)(f).

[60] *See* Board of Governors of the Federal Reserve System Docket No. R–0772 (April 24, 1996), 61 FR 20386 (May 6, 1996), and 12 CFR 220.12(f).

[61] *See* CBOE Approval Order, *supra* note 10.

[62] The value of an option contract is made up of two components: intrinsic value and time value. Intrinsic value, or the in-the-money-amount, is an option contract's arithmetically determinable value based on the strike price of the option contract and the market value of the underlying security. Time value is the portion of the option contract's value that is attributable to the amount of time remaining until the expiration of the option contract. The more time remaining until the expiration of the option contract, the greater the time value component.

[63] For similar reasons, the Commission believes that it is appropriate for the Exchange to permit the extension of credit on long box spreads comprised entirely of European-style options that are listed or guaranteed by the carrying broker-dealer. Because the European-style long box spread locks in the ability to buy and sell the underlying component or index for a profit, and all of the component options must be exercised on the same expiration day, the Commission believes that the combined positions have adequate value to support an extension of credit.

[64] For example, the Black-Scholes model and the Cox Ross Rubinstein model are often used to price options. *See* F. Black and M. Scholes, *The Pricing of Options and Corporate Liabilities*, 81 Journal of Political Economy 637 (1973), and J.C. Cox, S.A. Ross, and M. Rubinstein, *Option Pricing: A Simplified Approach*, 7 Journal of Financial Economics 229 (1979).

[65] In this regard, the Commission notes that the CBOE, in its options margin proposal, stated that ''[t]he fact that market-maker clearing firms and the Options Clearing Corporation extend credit on long options demonstrates that long options are

Continued

that because options market participants possess significant experience in assessing the value of options, including the use of sophisticated models, it is appropriate for them to extend credit on long term options and warrants.

Furthermore, since 1998, lenders other than broker-dealers have been permitted to extend 50% loan value against long listed options under Regulation U.[66] The Commission understands that the current bar preventing broker-dealers from extending credit on options may place some NYSE member firms at a competitive disadvantage relative to other financial service firms. By permitting Exchange members to extend credit on long term options and warrants, the proposal should enable Exchange members to better serve customers and offer additional financing alternatives.

The Commission believes that it is appropriate for the Exchange to recognize the hedged nature of certain combined options strategies and prescribe margin and cash account requirements that better reflect the true risk of the strategy. Under current Exchange rules, the multiple positions comprising an option strategy such as a butterfly spread must be margined separately. In the case of a butterfly spread, the two component spreads (bull spread and bear spread) are margined without regard to the risk profile of the entire strategy. The net debit incurred on the bullish spread must be paid in full, and margin equal to the exercise price differential must be deposited for the bearish spread.

The Commission believes that the revised margin and cash account requirements for butterfly spread and box spread strategies are reasonable measures that will better reflect the risk of the combined positions. Rather than view the butterfly and box spread strategies in terms of their individual option components, the Exchange's proposal would take a broader approach and require margin that is commensurate with the risk of the entire hedged position. For long butterfly spreads and long box spreads, the proposal would require full payment of the net debit that is incurred when the spread strategy is established.[67] For short butterfly spreads and short box spreads, the initial and maintenance margin required would be equal to the maximum risk potential. Thus, for short butterfly spreads comprised of call options, the margin must equal the aggregate difference between the two lowest exercise prices. For short butterfly spreads comprised of put options, the margin must equal the aggregate difference between the two highest exercise prices. For short box spreads, the margin must equal the aggregate difference in the two exercise prices involved. In each of these instances, the net credit received from the sale of the short option components may be applied towards the requirement.

The Commission believes that the proposed margin and cash account requirements for butterfly spreads and box spreads are appropriate because the component options positions serve to offset each other with respect to risk. The proposal takes into account the defined risk of these strategies and sets margin requirements that better reflect the economic reality of each strategy. As a result, the margin requirements are tailored to the overall risk of the combined positions.

For similar reasons, the Commission approves of the proposed cash account requirements for spreads made up of European-style cash-settled stock index options and stock index warrants. Under the proposal, a short position would be considered covered, and thus eligible for the cash account, if a long position in the same European-style cash-settled stock index option or stock index warrant was held in, or purchased for, the account on the same day. In addition, the long and short positions must expire concurrently, and the cash account must contain cash, cash equivalents, or an escrow agreement equal to at least the aggregate exercise price differential.

The Commission believes that it is appropriate for the Exchange to revise the maintenance margin requirements for several hedging strategies that combine stock positions with options positions. The Commission recognizes that heding strategies such as the Long Put/Long Stock, Long Call/Short Stock, Conversion, Reverse Conversion, and Collar are designed to limit the exposure of the investor holding the combined stock and option positions. The proposal would modify the maintenance margin required for the stock component of a hedging strategy. For example, the stock component of the Long/Put/Long Stock combination currently is margined without regard to the hedge provided by the long put position (*i.e.*, the 25% maintenance margin requirement for the stock component is applied in full). Under the proposal, the maintenance margin requirement for the stock component of a Long Put/Long Stock strategy would be the lesser of: (i) 10% of the put option exercise price, plus 100% of any amount by which the put option is out-of-the-money; or (ii) 25% of the current market value of the long stock position. Although for some market values the proposed margin requirement would be the same as the current requirement, in many other cases it would be lower.[68] The Commission believes that reduced maintenance margin requirements for the stock components of hedging strategies are reasonable given the limited risk profile of the strategies.

The Commission notes that the proposed changes were reviewed carefully by the 431 Committee and the Options Subcommittee, which is comprised of industry participants who have extensive experience in margin and credit matters. In addition, as noted above, the NYSE's proposal is substantially identical to a CBOE proposal, which the Commission has approved.[69] In approving the CBOE's proposal, the Commission noted the CBOE's experience in monitoring the credit exposures of options strategies and the fact that the CBOE regularly examines the coverage of options margins as it relates to price movements in the underlying securities and index components.[70] Therefore, the Commission is confident that the

acceptable collateral to lenders. In addition, banks have for some time loaned funds to market-maker clearing firms through the Options Clearing Corporation's Market Maker Pledge Program.'' *See* CBOE Approval Order, *supra* note 10.

[66] *See* Board of Governors of the Federal Reserve System Docket Nos. R–0905, R–0923, and R–0944 (January 8, 1998), 63 FR 2806 (January 16, 1998). In adopting the final rules that permitted non-broker-dealer lenders to extend credit on listed options, the Federal Reserve Board stated that it was:

[A]mending the Supplement to Regulation U to allow lenders other than broker-dealers to extend 50 percent loan value against listed options. Unlisted options continue to have no loan value when used as part of a mixed-collateral loan. However, banks and other lenders can extend credit against unlisted options if the loan is not subject to Regulation U (12 CFR 221 *et seq.*).

The Board first proposed margining listed options in 1995. *See* Board of Governors of the Federal Reserve System Docket No. R–0772 (June 21, 1995), 60 FR 33763 (June 29, 1995) (''[T]he Board is proposing to treat long positions in exchange-traded options the same as other registered equity securities for margin purposes.'')

[67] However, for long box spreads made up of European-style options, the margin requirement is 50% of the aggregate difference in the two exercise prices.

[68] For example, for an investor who is long 100 shares of XYZ @ 52 and long 1 XYZ Jan 50 Put @ 2, the margin required under the proposal would be $700—the lesser of ((10% × 50) + (100% × 2) =7) or 25% × 52 = 13). In contrast, the current margin requirement would be $1,300, a difference of $600. *See* CBOE Approval Order, *surpa* note 10, at footnote 63.

[69] *See* CBOE Approval Order, *supra,* note 10.

[70] *Id.*

proposed margin requirements are consistent with investor protection and properly reflect the risks of the underlying options positions.

The Commission notes that the margin requirements approved in this order are mandatory minimums. Therefore, an Exchange member may freely implement margin requirements that exceed the margin requirements adopted by the Exchange.[71] The Commission recognizes that the Exchange's margin requirements serve as non-binding benchmarks, and that Exchange members often establish different margin requirements for their customers based on a number of factors, including market volatility. The Commission encourages Exchange members to continue to perform independent and rigorous analyses when determining prudent levels of margin for customers.

The Commission also believes that it is reasonable for the Exchange to define ''butterfly spread'' and ''box spread.'' These definitions will specify which multiple options positions, if held together, qualify for classification as butterfly or box spreads, and consequently are eligible for the proposed cash and margin treatment. The Commission believes that it is important for the Exchange to clearly define which options strategies are eligible for the proposed margin treatment.

In response to the Brunelle Letter, which recommended that the NYSE adopt a more expansive definition of ''butterfly spread,'' the NYSE noted that the 431 Committee thoroughly reviewed a wide range of spread transactions in compiling its recommendations of strategies to include in the proposal.[72] According to the NYSE, the 431 Committee decided to limit its recommendation to less complex, readily identifiable strategies. The NYSE maintains that the commenter's broader definition of butterfly spread does not meet the 431 Committee's criteria. However, the NYSE stated that it would consider the practicality of including more sophisticated strategies if there is sufficient industry interest.[73]

The Commission believes that the NYSE's approach is reasonable. The NYSE's proposed definition of a butterfly spread is consistent with the definition adopted by the CBOE[74] and, accordingly, will establish consistent rules for joint NYSE/CBOE members. In addition, the NYSE and CBOE definitions of butterfly spread reflect the consensus reached by the 431 Committee and the Options Subcommittee, which, as noted above, are comprised of industry participants with extensive experience in margin and credit matters. The Commission also believes that the NYSE's approach will allow the Exchange to gain experience in monitoring the new margin requirements in connection with less complex strategies before considering whether to include more sophisticated strategies. Accordingly, the Commission believes that it is reasonable for the NYSE to retain its proposed definition of butterfly spread.

The Commission also believes that it is reasonable for the NYSE to revise its definition of ''current market value'' and ''current market price'' in NYSE Rule 431(f)(2)(C) to conform to Regulation T. A linkage to the Regulation T definition should keep the Exchange's definition equivalent to Regulation T without requiring a rule filing if the Federal Reserve Board revises its definition of Regulation T. In addition, the Commission believes that it is reasonable for the NYSE to define an ''escrow agreement'' to establish clear requirements for an escrow agreement.[75]

In response to the CBOE's comments regarding short equity put options, the NYSE proposed in Amendment No. 1 to modify NYSE Rule 431(f)(2)(D) to provide that the minimum customer margin requirement for a short put on a listed equity will be the current value of the put plus 10% of the put's exercise price. The minimum customer margin requirement for a short put on an OTC equity will be 10% of the put's exercise price. The change proposed in Amendment No. 1 will make the NYSE's treatment of short equity put options consistent with the CBOE's treatment of short equity put options.[76] Accordingly, the proposed change in the NYSE's margin requirement for short listed and OTC equity put options raises no new regulatory issues and provides for consistent treatment of short equity put options under the rules of the NYSE and the CBOE.

The revisions to the Exchange's margin rules will significantly impact the way Exchange members calculate margin for options customers. The Commission believes that it is important for the Exchange to be adequately prepared to implement and monitor the revised margin requirements. To best accommodate the transition, the Commission believes that a phase-in period is appropriate. Therefore, the approved margin requirements shall not become effective until the earlier of January 20, 2000 or such date the Exchange represents in writing to the Commission that the Exchange is prepared to fully implement and monitor the approved margin requirements.

The Commission expects the Exchange to issue an information memorandum to members that discusses the revised margin provisions and provides guidance to members regarding their regulatory responsibilities. The Commission also believes that it would be helpful for the Exchange to publicly disseminate (*i.e.*, via web site posting) a summary of the most significant aspects of the new margin rules and provide clear examples of how various options positions will be margined under the new provisions.

The Commission finds good cause for approving proposed Amendment Nos. 1 and 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Amendment No. 1 strengthens the NYSE's proposal by revising the margin requirement for short listed and OTC equity put options to make the NYSE's rule consistent with CBOE Rule 12.3(c)(5). Because this change conforms the NYSE's rule to an existing CBOE rule, which was approved by the Commission, the change raises no new regulatory issues. In addition, this provision will benefit options market participants by providing consistent treatment of short equity put options under the rules of the NYSE and the CBOE. Amendment No. 1 also clarifies the NYSE's proposal by making a technical correction and providing examples of the operation of the proposed rule in connection with various options strategies.

Amendment No. 2 strengthens the NYSE's proposal by providing that butterfly and box spreads carried in the cash account must be comprised of listed options or OTC options

[71] In this regard, the Commission notes that NYSE Rule 431(d), ''Additional Margin,'' requires NYSE member to: (1) Review limits and types of credit extended to all customers; (2) formulate their own margin requirements; and (3) review the need for instituting higher margin requirements, mark-to-markets and collateral deposits than are required by NYSE Rule 431 for individual securities or customer accounts.

[72] *See* Amendment No. 2, *supra* note 6.

[73] *Id.*

[74] *See* CBOE Approval Order, *supra* note 10.

[76] The proposal defines an escrow agreement, when used in connection with cash settled calls, puts, currency warrants, currency index warrants or stock index warrants, carried short, as any agreement issued in a forum acceptable to the NYSE under which a bank holding cash, cash equivalents, one or more qualified equity securities or a combination thereof is obligated (in the case of an option) to pay the creditor the exercise settlement amount in the event an option is assigned an exercise notice or, (in the case of a warrant) the funds sufficient to purchase a warrant sold short in the event of a buy-in.

[76] *See* CBOE Rule 12.3(c)(5).

guaranteed by the carrying broker-dealer. This change conforms the NYSE's proposal to the CBOE proposal approved previously by the commission.

Based on the above, the Commission finds that good cause exists, consistent with Section 19(b) of the Act,[77] to accelerate approval of Amendment Nos. 1 and 2 to the proposed rule change.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2, including whether Amendment Nos. 1 and 2 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR–NYSE–99–03 and should be submitted by November 12, 1999.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[78] that the proposed rule change (SR–NYSE–99–03), as amended, is approved. The approved margin requirements shall become effective the earlier of January 20, 2000 or such date the Exchange represents in writing to the Commission that the Exchange is prepared to fully implement and monitor the approved margin requirements.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[79]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–27601 Filed 10–21–99; 8:45 am]

BILLING CODE 8010–01–M

[77] 15 U.S.C. 78s(b).

[78] 15 U.S.C. 78s(b)(2).

[79] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42006; File No. SR–PHLX–99–36]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Permanent Approval of the X.Station Enhancement to the Electronic Order Book on the Options Floor

October 13, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 3, 1999, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Exchange.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to adopt the X.Station enhancement to the electronic order book on the options floor on a permanent basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx 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. Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1, which was filed on October 7, 1999, provided a nonsubstantive discussion about the success of the X.Station enhancement. *See* Letter to Mike Walinskas, Associate Director, Division of Market Regulation (''Division''), SEC, from Nandita Yagnik, Attorney, Phlx, dated September 30, 1999.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 7, 1998, the Commission approved, on a pilot basis, the implementation of the X.Station enhancement to the electronic order book on the options floor of the Phlx.[4] The pilot was extended twice and will expire on October 23, 1999.[5] As described in Rule 1080, Commentary .02, the electronic order book is an automated mechanism for specialists to hold and display orders based on price/time priority. The X.Station enhancement[6] provides certain improvements to the electronic order book such as expedited non-AUTO–X order execution and expedited cancel replacement processing.

AUTO–X is the automatic execution feature of the Automated Options Market System, the electronic order delivery and routing system for options orders. Previously, AUTO–X orders were executed against a ''shadow account'' for which the specialist was ultimately responsible. The execution was immediately reported back to the sending firm, and then, the specialist manually input the contra-side interest representing the booked order that became due as a result of the AUTO–X trade.

At this time, the Exchange proposes to adopt the X.Station enhancement on a permanent basis. The X.Station enhancement to the electronic order book matches incoming AUTO–X orders with booked orders by allowing the specialist to match two participants directly, without the specialist participating in the trade, by dropping the order to manual status.[7] The match is not automatic; the specialist drops the order to a manual status in order for the

[4] Security Exchange Act Release No. 39972 (May 7, 1998), 63 FR 26666 (May 13, 1998).

[5] Securities Exchange Act Release Nos. 40625 (November 2, 1998), 63 FR 60435 (November 9, 1998) and 41323 (April 22, 1999), 64 FR 23378 (April 30, 1999).

[6] The X.Station enhancement has been deployed floor-wide.

[7] The X.Station enhancement only applies to incoming AUTO–X orders on the electronic order book that are due a fill (*e.g.*, if an order is touching the book). All other AUTO–X orders are automatically executed through the wheel. When an AUTO–X order is due on the electronic order book, the order will flash red, notifying the specialist. The specialist then clicks on the order, dropping the order to manual status. Finally, the specialist fills the order from the crowd, if required by the parity/priority rules, or fills the order with the matching order from the electronic order book. Telephone conversation between Nandita Yagnik, Attorney Phlx, and Heather Traeger, Attorney, Division, SEC (October 13, 1999).

specialist to determine whether crowd participation under current parity/priority rules is due before executing the trade.[8] Thus, the specialist must ''select'' the orders on the book to execute the trade. Because the AUTO–X order has dropped to manual, the sending firm will not receive an execution report until the specialist selects and executes the trade.

The X.Station enhancement affords specialists relief from the manual burden of inserting trade participant and clearing information by writing an order ticket for the booked order. The X.Station enhancement should continue to reduce the amount of paper processed on the options floor; this in turn, should continue to reduce handling and processing time, including the likelihood of errors, thereby facilitating more prompt and accurate trade reporting.

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with Section 6(b)[9] of the Act in general and furthers the objectives of Section 6(b)(5)[10] in particular, because it fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by enhancing efficiency through automation in the options market.[11]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(5) thereunder.[13] The proposal effects a change in an existing order-entry or trading system of a self-regulatory organization that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–PHLX–99–36 and should be submitted by November 12, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–27604 Filed 10–21–99; 8:45 am]

BILLING CODE 8010–01–M

[8] *See* Phlx Rule 101(g).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] In reviewing the proposed rule change, the Commission considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(5).

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 3133]

Advisory Panel to the United States Section of the North Pacific Anadromous Fish Commission; Notice of a Closed Meeting

The Advisory Committee to the United States Section of the North Pacific Anadromous Fish Commission will meet on October 25, 1999, at the Westpark Baranof Hotel, 127 North Franklin Street, Juneau, Alaska. This session will involve discussion of the Seventh Annual Meeting of the North Pacific Anadromous Fish Commission, to be held on October 24–29, 1999. Notice is being provided within l5 days of this meeting due to scheduling requirements of the Committee. The discussion will begin at 2:00 p.m. and is closed to the public.

The members of the Advisory Committee will examine various options for the U.S. position at the Seventh Annual Meeting. These considerations must necessarily involve review of sensitive matters, the disclosure of which would frustrate U.S. participation at the Annual Meeting. Accordingly, the determination has been made to close the 2:00 p.m. meeting pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. Section 552b(c)(9).

Requests for further information on the meeting should be directed to Ms. Sally Cochran, International Relations Officer, Office of Marine Conservation (OES/OMC), Room 5806, U.S. Department of State, Washington, D.C. 20520–7818. Ms. Cochran can be reached by telephone on (202) 647–2883 or by FAX (202) 736–7350.

Dated: October 19, 1999.

R. Tucker Scully,

Deputy Assistant Secretary for Oceans, Fisheries and Space.

[FR Doc. 99–27781 Filed 10–20–99; 3:00 pm]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–6334]

Collection of Information by Agency Under Review by Office of Management and Budget

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520, the Coast Guard

intends to request the approval of the Office of Management and Budget (OMB) for the renewal of two information Collection Requests (ICRs). These ICRs comprise: 1. Vessel Reporting Requirement, and 2. Report of Oil or Hazardous Substance Discharge. Before submitting the ICRs to OMB, the Coast Guard is asking for comments on the collections described below.

DATES: Comments must reach the Coast Guard on or before December 21, 1999.

ADDRESSES: You may mail comments to the Docket Management System (DMS) [USCG–1999–6334], U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this Request. Comments will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

Copies of the complete ICRs are available through this docket on the Internet at http://dms.dot.gov and also from Commandant (G–SII–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document. With questions on the docket, ask Dorothy Walker, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9330.

Request for Comments

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their names and addresses, identify this document [USCG–1999–6334] and the specific ICR to which each comment applies, and give the reason(s) for each comment. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Information Collection Requests

1. *Title:* Vessel Reporting Requirement.

OMB Control Number: 2115–0551.

Summary: The collection of information requires the owner, charterer, managing operator, or agent of a vessel of the United States to immediately notify the Coast Guard if there is a reason to believe that his or her vessel may be lost or imperiled. The person must follow the report with written communication submitted to the Coast Guard within 24 hours.

Need: Title 46 U.S.C. 2306 authorizes the Coast Guard to implement the reporting requirements necessary to determine whether a vessel is in distress or lost and to take appropriate action to provide needed assistance.

Respondents: Owners, charterers, managing operators, or agents of U.S. vessels.

Frequency: On occasion.

Burden: The estimated burden is 137 hours annually.

2. *Title:* Report of Oil or Hazardous Substance Discharge.

OMB Control Number: 2115–0137.

Summary: The collection of information requires any person in charge of a vessel or an onshore or offshore facility to report to the National Response Center, as soon as he or she has knowledge of any discharge of oil or a hazardous substance.

Need: Titles 33 CFR 153.203, 40 CFR 263.30 and 264.56, and 49 CFR 171.15 mandate that the National Response Center be the central place to report all polluting spills by the public.

Respondents: Persons in charge of vessels or onshore or offshore facilities.

Frequency: On occasion.

Burden: The estimated burden is 7,917 hours annually.

Dated: October 15, 1999.

G. N. Naccara,

Rear Admiral, U.S. Coast Guard, Director of Information and Technology.

[FR Doc. 99–27664 Filed 10–21–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on November 10, 1999, at 10 a.m.

ADDRESSES: The meeting will be held at the FAA Headquarters, 800 Independence Avenue, SW., Bessie Coleman Conference Center, 2nd Floor, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9683; fax (202) 267–5075; e-mail Jean.Casciano@faa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Executive Committee to be held on November 10, 1999, at the FAA Headquarters, 800 Independence Avenue, SW., Bessie Coleman Conference Center, 2nd Floor, Washington, DC. The agenda will include:

- Use of proxy votes
- The future of Emergency Evacuation Issues
- Administrative items

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by November 1, 1999, to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to the meeting.

If you are in need of assistance or require a reasonable accommodation for this meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on October 18, 1999.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 99–27665 Filed 10–21–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket RSPA–98–4957; Notice 10]

Notice of New Information Collection Comments

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Research and Special Programs Administration's (RSPA) is publishing its intention to create a new information collection in support of the Office of Pipeline Safety (OPS) Damage Prevention Grant Program. The purpose of this notice is to allow the public 60 days from the date of this notice to send in their comments.

Congress authorized the Department of Transportation to create a Damage Prevention Grant Program to assist the States. The Department is requiring that states requesting grants must provide a written proposal to RSPA for approval.

DATES: Comments on this notice must be received by December 21, 1999 to be assured of consideration.

ADDRESSES: Comments should identify the docket number of this notice, RSPA–98–4957, and be mailed to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street SW, Washington, DC 20590–0001. You should submit the original and one copy. If you wish to receive confirmation of receipt of your comments, you must include a stamped, self-addressed postcard. The Dockets facility is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays. In addition, the public may also submit or review comments by accessing the Docket Management System's home page at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW Washington, D.C. 20590, (202) 366–6205 or by electronic mail at marvin.fell@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

Title: Damage Prevention Grant Program.

Type of Request: New.

Abstract: Third party damage is a leading cause of pipeline accidents. Congress has allocated funds to provide states grants to develop one-call notification programs which will reduce the amount of third party damage. States will be required to submit proposals for these grants that will be evaluated by RSPA.

Estimate of Burden: The average burden hours per response is 40 hours.

Respondents: States.

Estimated Number of Respondents: 30 the first year and 40 the second year.

Estimated Number of Responses per Respondent: 1 per year.

Estimated Total Annual Burden on Respondents: 1200–1600 hours.

Copies of this information collection can be reviewed at the Dockets Facility, Plaza 401, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590 from 9 a.m. to 5 p.m. Monday through Friday except Federal holidays. They also can be viewed over the Internet at http://dms.dot.gov.

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC on October 15, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–27666 Filed 10–21–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket RSPA–98–4957; Notice 9]

Notice of Extension of Existing Information Collection Comments

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Research and Special Programs Administration's (RSPA) is publishing its intention to renew an existing information collection in support of the Office of Pipeline Safety (OPS) for Management Information System (MIS) Standardized Data Collection and Reporting of Drug Testing Materials. The purpose of this notice is to allow the public 60 days from the date of this notice to send in their comments.

RSPA believes that its drug testing requirements are an important tool for operators to monitor drug usage in the industry. RSPA has found that drug use in the pipeline industry is less than one percent of all covered employees.

DATES: Comments on this notice must be received by December 21, 1999 to be assured of consideration.

ADDRESSES: Comments should identify the docket number of this notice, RSPA–98–4957, and be mailed to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street SW, Washington, DC 20590–0001. You should submit the original and one copy. If you wish to receive confirmation of receipt of your comments, you must include a stamped, self-addressed postcard. The Dockets facility is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays. In addition, the public may also submit or review comments by accessing the Docket Management System's home page at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590, (202) 366–6205 or by electronic mail at marvin.fell@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

Title: Management Information System (MIS) Standardized Data Collection and Reporting of Drug Testing Materials.

OMB Number: 2137–0579.

Type of Request: Extension of an existing information collection.

Abstract: Drug abuse is a major societal problem and it is reasonable to assume the problem exists in the pipeline industry as it does in society as a whole. The potential harmful effect of drug abuse on safe pipeline operations warrants imposing comprehensive drug testing regulations on the pipeline industry. These rules are found in 49 CFR part 199. These regulations require annual information collection of the results of the drug testing program.

Estimate of Burden: The average burden hours per response is approximately 6 hours.

Respondents: Pipeline operators.

Estimated Number of Respondents: 2,149.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 12,809 hours.

Copies of this information collection can be reviewed at the Dockets Facility, Plaza 401, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590 from 9 a.m. to 5 p.m., Monday through Friday except Federal holidays. They also can be

viewed over the Internet at http://dms.dot.gov.

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC on October 15, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–27667 Filed 10–21–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Customs Service

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of Customs duties. For the quarter beginning October 1, 1999, the interest rates for overpayments will be 7 percent for corporations and 8 percent for non-corporations, and the interest rate for underpayments will be 8 percent. This notice is published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Ronald Wyman, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278, (317) 298–1200, extension 1349.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub.L. 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations. The interest rate applicable to underpayments is not so bifurcated.

The interest rates are based on the short-term Federal rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 99–36 (*see*, 1999–35 IRB 319, dated August 30, 1999), the IRS determined the rates of interest for the first quarter of fiscal year (FY) 2000 (the period of October 1–December 31, 1999). The interest rate paid to the Treasury for underpayments will be the short-term Federal rate (5%) plus three percentage points (3%) for a total of eight percent (8%). For corporate overpayments, the rate is the Federal short-term rate (5%) plus two percentage points (2%) for a total of seven percent (7%). For overpayments made by non-corporations, the rate is the Federal short-term rate (5%) plus three percentage points (3%) for a total of eight percent (8%). These interest rates are subject to change for the second quarter of FY–2000 (the period of January 1–March 31, 2000).

For the convenience of the importing public and Customs personnel the following list of Internal Revenue Service interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate overpay-ments (Eff. 1–1–99) (percent)
Prior to:				
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate overpayments (Eff. 1–1–99) (percent)
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	123199	8	8	7

Dated: October 18, 1999.

Raymond W. Kelly,

Commissioner of Customs.

[FR Doc. 99–27622 Filed 10–21–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Access to the Customs Electronic Bulletin Board

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This document announces that future access to the Customs Electronic Bulletin Board (CEBB) will be available only through the Internet. As of January 1, 2000, the CEBB will no longer be accessible through a separate, Customs-maintained, dial-up via a telephone modem. This action is being taken because with the increasing use of the Internet by the international trade community there is no longer any need for Customs to maintain the separate dial-up system.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Howard Plofker, Office of Regulations and Rulings, (202) 927–2314; e:mail—howard.g.plofker@customs.treas.gov.

SUPPLEMENTARY INFORMATION:

Background

On January 29, 1991, Customs published a notice in the **Federal Register** (56 FR 3294) announcing the increased availability of information intended to assist the trade community in its working with Customs through the Customs Electronic Bulletin Board (CEBB). Customs initiated the CEBB so that persons with personal computers and telephone modems could access items of interest otherwise available only to those members of the trade community with access to the Automated Commercial System (ACS). The CEBB was available to interested persons free-of-charge by way of eight dedicated telephone lines. Eventually, Customs also placed the CEBB information on the Internet.

Since 1991, the Internet has grown in popularity and the amount of persons utilizing the CEBB through the separate dial-up access has dwindled, making the separately maintained dial-up system no longer necessary. Accordingly, although the CEBB will continue to be maintained by Customs as a source of trade information available on the Internet, it will no longer be separately available via modem dial-up after December 31, 1999.

Dated: October 19, 1999.

Raymond W. Kelly,

Commissioner of Customs.

[FR Doc. 99–27639 Filed 10–21–99; 8:45 am]

BILLING CODE 4820–02–P

federal register

Friday
October 22, 1999

Part II

Small Business Administration

13 CFR Part 121

Small Business Size Regulations; Size Standards and the North American Industry Classification System; Proposed Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Regulations; Size Standards and the North American Industry Classification System

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) proposes to amend its size regulations by establishing small business size standards for industries defined under the North American Industry Classification System (NAICS). Small business size standards currently exist for most industries under the Standard Industrial Classification (SIC) system. NAICS replaced the SIC system effective January 1, 1997. All Federal agencies that collect establishment-based data must use the new system. Although SBA is not required to use NAICS, SBA proposes to establish small business size standards for industries as defined in NAICS. SBA is doing so because it views NAICS as a better description of industries in the U.S. economy than the SIC system. Also, SBA uses industry data from the Census Bureau to develop and revise size standards, which will no longer be available for SIC industries after the 1997 Economic Census. SBA proposes that NAICS-based size standards replace the SIC-based size standards in 13 CFR 121.201, and that the new size standards be effective for Fiscal Year (FY) 2001, which begins October 1, 2000.

DATES: SBA must receive comments on or before December 21, 1999.

ADDRESSES: Address all comments concerning this Notice of Proposed Rulemaking to Gary M. Jackson, Assistant Administrator for Size Standards, Office of Size Standards, 409 3rd St., SW, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Office of Size Standards, at (202) 205–6618.

SUPPLEMENTARY INFORMATION:

Introduction

Under section 3(a)(2) of the Small Business Act, SBA establishes small business definitions, or size standards, by industry category and varies size standards as necessary to reflect industry differences to determine small business eligibility for Federal programs. SBA currently uses the SIC system to define an industry. Because NAICS replaced the SIC system for use of Federal agencies in collecting economic data, SBA reviewed NAICS to determine whether SBA should also use NAICS to define industries for the purpose of establishing industry size standards. Based on its review, SBA proposes this rule to convert small business size standards to NAICS, effective October 1, 2000. SBA invites comments from interested parties on SBA's proposal to adopt NAICS-based size standards.

NAICS was designed, as was the SIC system, solely for statistical purposes. The Office of Management and Budget (OMB) published a ''Notice of final decision'' in the **Federal Register** (FR) on April 9, 1997 (62 FR 17288–17478), announcing its decision to adopt NAICS. OMB's notice states that ''NAICS shall not be used in any administrative, regulatory, or tax program unless the head of the agency administering that program has first determined that the use of such industry definitions is appropriate for implementation of the program's objectives.''

As the Administrator of SBA I have determined that the NAICS industry definitions are appropriate for use in SBA programs and for the implementation of its objectives. SBA proposes this rule to amend its size regulations. SBA believes NAICS is an improvement over the SIC system in identifying industries in the U.S. economy. SBA also believes that size standards established for NAICS industries will better define small business.

Present Status of NAICS

OMB adopted NAICS to replace the 1987 SIC system. NAICS is based on concepts developed by the U.S. Economic Classification Policy Committee (ECPC), an interagency committee established by OMB, with Statistics Canada and Mexico's Instituto Nacional de Estadística Geografía e Informatíca. OMB first announced its intention to revise the SIC for 1997 in the **Federal Register** on March 31, 1993 (58 FR 16990–17004). From then and through to November 5, 1996, OMB published six issue papers, two research reports and seven **Federal Register** notices requesting public comments. OMB published the final NAICS structure in the April 9, 1997, **Federal Register** notice, referred to above.

SBA does not include here the entire texts of OMB's or ECPC's documents. SBA suggests that interested parties review the above cited April 9, 1997, **Federal Register** notice, with earlier **Federal Register** notices, proposed rules and other papers and documents that preceded and followed that final notice. SBA believes that doing so can help interested parties understand NAICS better and increase awareness of the proposed changes that affect them and their industry. Copies of the **Federal Register** notices are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by calling 1 (202) 512–1800. Those with access to the Internet can obtain all **Federal Register** notices for 1995 and forward via GPO Access at http://www.access.gpo.gov/su__docs. Also, the U.S. Department of Commerce, Bureau of Census (Census Bureau) at http://www.census.gov/epcd/www/naics.html has the April 9, 1997, **Federal Register** notice and other relevant documents.

The text of the April 9, 1997, **Federal Register** notice includes two tables that present the relationship between the NAICS and SIC structures. ''NAICS United States,'' when it refers to NAICS, is used to distinguish it from the NAICS of Canada and the NAICS of Mexico. Unless otherwise noted, throughout this proposed rule SBA refers to ''NAICS United States'' simply as ''NAICS,'' unless the longer term in a given context will avoid confusing it with the NAICS of Canada or Mexico. Table 1 of the April 9, 1997, **Federal Register** notice is the entire 1997 NAICS United States related to the 1987 SIC system. Table 2 of the April 9, 1997, **Federal Register** notice is the 1987 SIC system related to the 1997 NAICS United States.

SBA will summarize below some of the concepts of NAICS, and explain why SBA proposes to establish size standards using NAICS. SBA then describes its proposed implementation schedule and conversion methodology.

Overview of NAICS

The SIC system was established in the 1930's. With many revisions, the last in 1987, the SIC system included new industries and deleted or changed others, but kept its basic structure. NAICS was designed specifically to incorporate four principles into an industry classification system. OMB restated these principles in the April 9, 1997, **Federal Register** notice,

> ''(1) NAICS will be erected on a production-oriented, or supply-based, conceptual framework. This means that producing units that use identical or similar production processes will be grouped together in NAICS. (2) The system will give special attention to developing production-oriented classifications for (a) new and emerging industries, (b) service industries in general, and (c) industries engaged in the production of advanced technologies. (3) Time series continuity will be maintained to the extent possible. However, changes in the economy and proposals from data users must be considered. In addition, adjustments will

be required for sectors where Canada, Mexico, and the United States presently have incompatible industry classification definitions in order to produce a common industry system for all three North American countries. (4) The system will strive for compatibility with the 2-digit level of the International Standard Industrial Classification of All Economic Activities (ISIC, Rev. 3) of the United Nations.'' (62 FR 17289)

NAICS is a new system that classifies establishments according to how they conduct their economic activity. Establishments that have similar methods of conducting their economic activity are classified together in an industry. ''Its [NAICS's] purposes are (1) To facilitate the collection, tabulation, presentation, and analysis of data relating to establishments, and (2) to promote uniformity and comparability in the presentation of statistical data describing the economy.'' (62 FR 17288)

NAICS recognizes a large number of new industries and expands many others. There are 1,004 SIC codes and approximately 1,175 NAICS codes, including more than 150 new Services industries. In manufacturing alone, there are 473 NAICS industries, of which 79 are new. Many SIC economic activities are combined with other similar activities to form new NAICS industries. Also, many economic activities that are parts of individual SIC codes are now entirely new NAICS industries. For example, there are many economic activities described in SIC 7389 (Business Services, Not Elsewhere Classified). Appendix B, ''1987 U.S. SIC Matched to 1997 NAICS U.S.,'' of *North American Industry Classification System — United States, 1997,* indicates that economic activities included within SIC 7389 are now classified in 36 separate NAICS industries.

The NAICS structure differs from that of the SIC system by using new terminology to identify groups of industries and a new coding system to identify various industry groupings.

''NAICS is organized in a hierarchical structure, much like the existing U.S. SIC system. The 1987 SIC system employs a 4-digit coding system, in which the first two digits designate a 'major group' that in NAICS is known as a 'subsector,' the third digit designates the industry group, and the fourth digit designates the industry. For example, in the 1987 U.S. SIC, the two digits 26 designate the major group for the manufacture of 'Paper and Allied Products,' within which the digits 262 designate an industry group titled 'Paper Mills,' which contains one 4-digit industry, SIC 2621, also titled 'Paper Mills.' NAICS employs a 6-digit coding system in which the first two digits designate the sector (the NAICS term 'sector' is replacing the term 'division' used in the 1987 SIC), the third digit designates the subsector, the fourth digit designates the industry group, the fifth digit represents the NAICS industry (the most detailed level at which comparable data will be available for Canada, Mexico, and the United States), and the sixth digit designates individual country-level national industries. Using the paper mill example above, in NAICS United States industry 322121 the two initial digits 32 designate a manufacturing sector and the three digits 322 designate the paper manufacturing subsector. Within 322 is the industry group 3221, Pulp, Paper, and Paperboard Mills, within which is NAICS industry 32212, Paper Mills. There are two U.S. national industries under Paper Mills: 322121, Paper (except Newsprint) Mills, and 322122, Newsprint Mills.'' (62 FR 17290)

Table I below shows the structural difference between the NAICS 6-digit and the SIC 4-digit systems.

TABLE I

NAICS		SIC	
XX	Industry Sector	X	Industry Division
XXX	Industry Subsector	XX	Major Group
XXXX	Industry Group	XXX	Industry Group
XXXX	Industry	XXXX	Industry
XXXXXX	National Industry		

Table II illustrates how the paper mills example above is represented in the NAICS United States and the SIC tables as follows:

TABLE II

NAICS		SIC	
31–33	Manufacturing	Div	Manufacturing
322	Paper Manufacturing	26	Paper and Allied Products
3221	Pulp, Paper, and Paperboard Mills	262	Paper Mills
32212	Paper Mills	2621	Paper Mills
322121	Paper (except Newsprint) Mills		
322122	Newsprint Mills		

Reasons To Change

NAICS is a significant improvement over the SIC system and provides a better structure on which to establish size standards by industry category. NAICS was developed to describe the structure of today's economy. SBA is confident that a new table of small business size standards reflecting NAICS industries will be in the interests of small business. SBA believes it should use NAICS for its small business size standards for the following reasons:

1. The SIC system has not kept up with the economy. This problem is a major criticism of the SIC system, because it does not adequately reflect the emergence of industries that introduce and use new and advanced technologies. The SIC system also does not sufficiently recognize industries that produce, create or provide the means of access to information and technology — industries whose main capital is knowledge and human input. Further, the current version of the SIC system is eleven years old, and OMB will not update or revise it. The SIC system will not be improved. Because the SIC system does not adequately describe industries in today's economy, SBA, for size standards purposes, has already had to segment some individual SIC industry codes, establishing multiple size standards within them to reflect

certain economic segments of those SIC industries. An example of a size standard for a segment of an industry is SIC 1629 (Heavy Construction — Not Elsewhere Classified) which includes ''Dredging — General Contractors.'' Other examples of SIC codes with more than one size standard are SIC 4212, SIC 4499, SIC 4522, SIC 7389 and SIC 8744.

2. NAICS recognizes the growth and expansion of the services and technological industries. NAICS gives special attention to the Services industries, which constitute approximately 75% of the Gross Domestic Product, but make up only one of the ten Divisions in the SIC system, namely, Division I. The SIC Services Division has evolved into eight separate NAICS Sectors. For example, there is one for Professional, Scientific and Technical Services. This Sector includes the legal, accounting, architectural, engineering, computer, environmental remediation, and other management and consulting services. Also, manufacturing is reorganized to better categorize recent technological products, such as the manufacture and reproduction of magnetic and optical media, which identifies software and prerecorded compact discs as separate industries.

3. The Census Bureau will no longer organize and make data available for SIC industries after the 1997 Economic Census. The Census Bureau performs an Economic Census every five years, and the last one available was for 1992. After the data from each of the recent (including 1992) Economic Censuses became available, SBA obtained from the Census Bureau a special compilation for its own use in evaluating, determining and revising small business size standards. For the 1997 Economic Census, the special compilation needed by SBA will be based on both the SIC and NAICS data organization. Thereafter, the Census Bureau will organize future quinquennial Economic Census data on NAICS alone.

Census data are important because of the statutory mandate that ''the [SBA] Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator.'' (Small Business Act, section 3(a)(3), 15 U.S.C. 632). SBA develops size standards on the premise that the relative position of firms within an industry, in terms of size, differentiates a small business from all other businesses in that industry. SBA uses the most recent Economic Census data to determine the size of small businesses in an industry relative to their entire industry of which they are a part. If SBA continues to use the SIC system to establish size standards, it will have to rely on data organized by NAICS industries that cannot be directly compared with its size standards.

4. SBA believes that all other Federal agencies will switch to NAICS for their program and administrative purposes, including consistency in the use of an industry classification system within the Federal government. Many of these Federal agencies use an industry classification system associated with its procurement activities, procurement data collection and analysis, and regulatory enforcement. Also, there are many non-federal governmental bodies, private associations and companies that use the SIC system and have adopted SBA's small business size standards. SBA expects that most of them, if they are not already doing so, will convert to NAICS as well. If other Federal agencies and the private sector organizations implement NAICS for various program and administrative purposes, confusion and inconsistency will likely result if SBA delays issuing a NAICS size standards table. Since industry data will be available to these agencies in the NAICS format, SBA believes its size standards should be available also based on NAICS. Since small business size standards have a direct affect on Federal government activities, beyond record keeping and statistical analysis, SBA believes that issuing a new table of size standards will properly serve users of NAICS and small business size standards.

Proposed Implementation Date of NAICS Size Standards

NAICS-based size standards are proposed to be effective for all Federal small business programs beginning with FY 2001, which starts October 1, 2000. SBA has selected this date to implement NAICS-based size standards for several reasons.

First, Federal government recordkeeping and statistics will be more consistent and comparable with past data and for analyzing future small business activity if implementation of the new table of size standards is at the beginning of a fiscal year.

Second, SBA and other users of size standards will need to collect data on their small business programs on the NAICS format to be able to compare those data with the future Federal statistics. Establishing NAIC-based size standards by FY 2001 will allow for the development of one or two years worth of historical program data prior to the release of NAICS statistics. The availability of such comparable data will ensure the credibility of analyses comparing program data with industry data.

Finally, small business size standards apply to most Federal agencies and their programs involving small businesses. Federal agencies that use NAICS and SBA's small business size standards will need time to determine how to implement the new size standards and to develop training tools necessary to do so. SBA believes that a FY 2001 implementation will allow enough time for agencies to learn NAICS and to convert and update their data bases and tracking systems. If, after having evaluated the comments to this proposed rule, SBA decides to put the new table of size standards into place, it will issue a final rule as soon as possible. SBA intends to provide agencies with sufficient time to implement the size standards.

Methodology for Converting From SIC Codes to NAICS Codes for Establishing Size Standards

SBA establishes small business size standards at the industry level, and in some specific instances for an economic activity below the industry level. In the SIC system, the industry level is identified by a 4-digit code. In establishing size standards based on NAICS, the SBA is proposing to establish individual small business size standards at the United States Industry level. As discussed above, NAICS identifies an industry by a 5-digit code for applicability to all three countries. But NAICS also permits each country to establish a national industry that applies only to itself, which is identified by a 6-digit code. Accordingly, a size standard will be established for each 6-digit United States Industry. If a NAICS Industry does not contain U.S. Industries, then a size standard will be established at the NAICS Industry level, but all NAICS codes for which SBA proposes size standards will include six digits. As stated, six-digit NAICS codes represent U.S. Industries. ''A zero as the sixth digit generally indicates that the [5-digit] NAICS industry and the U.S. Industry are the same'' (*North American Industry Classification Manual — United States, 1997*, p. 15). This approach is consistent with the coding scheme in the NAICS Manual, and will make it easier for SBA and other users of NAICS to convert database fields from four-digit SIC industries to the six-digit NAICS industries.

As an alternative, SBA considered establishing size standards only at the 5-digit NAICS Industry level, which would result in fewer size standards.

This might seem to simplify the structure of SBA's size standards. However, SBA does not believe this is in the best interests of businesses eligible under the current size standards. NAICS United States recognizes many ''large, important U.S. industries that cannot be recognized in the other countries [Canada and Mexico] because of size, specialization, or organization of the industry'' (*North American Industry Classification System — United States, 1997,* p. 15). Many of these U.S. Industries are the same as one or more SIC industries, often with different size standards. If SBA were to establish size standards at only the 5-digit (*i.e.,* NAICS Industry) level, many size standards now based on SIC codes would have to be changed to develop a common size standard at the NAICS Industry level. This would produce undesirable changes to the size standards of too many industries, and consequently, alter the small business status of many businesses, possibly causing unnecessary disruption in business activities and planning. More significantly, some businesses that SBA believes should be considered small would lose their small business status while other businesses would gain small business status that SBA does not consider to be properly defined as small business. This would occur since the decision on the NAICS size standard would be based on a broader definition of an industry than that which actually exists in the United States.

In establishing size standards for NAICS Industries, SBA proposes to use the current SIC-based size standards and convert them to NAICS following certain guidelines described below in Table III. In doing so, SBA will retain, to the extent practicable, the small business status of firms currently eligible for Federal small business programs. For many SIC industries, there exists a corresponding NAICS industry. For example, SIC 8111, Legal Services, is the same as NAICS 54111, Offices of Lawyers. In this case and in others like it, SBA proposes that the size standard for the NAICS industry shall be the same as it is for the SIC industry ($5 million in this example).

For many other industries, however, the conversion process is more than a simple transference of code numbers from one system to another. Many NAICS industries correspond to a combination of two or more SIC industries. A single NAICS industry may be comprised of a part of one SIC industry, parts of two or more SIC industries, two or more entire SIC industries, or one or more entire SIC industries together with one or more parts of SIC industries. (*E.g.,* NAICS 334119, Other Computer Peripheral Equipment Manufacturing, is constructed from three manufacturing SIC industries — all of SIC 3577, Computer Peripheral Equipment, Not Elsewhere Classified; part of SIC 3578, Calculating and Accounting Machines (point of sale terminals and fund transfer devices); and part of SIC 3699, Electrical Machinery, Equipment and Supplies, NEC [bar code scanners].) Similarly, parts of a single SIC industry can now be found in more than one NAICS industry. (*E.g.,* parts of SIC 3652, Phonograph Records and Prerecorded Audio Tapes and Disks, can be found in NAICS 334612, Prerecorded Compact Disc [Except Software], Tape and Record Reproducing, and in NAICS 51222, Integrated Record Production/Distribution.) In many cases, a common size standard exists for the SIC industries comprising the new NAICS Industry. In other cases, the SIC industries have different size standards, and SBA must decide what NAICS size standard is the most appropriate for the NAICS industry to minimize the number of small businesses affected by a change in the size standard.

To ensure that NAICS size standards are established in a consistent manner, SBA proposes a methodology to determine an appropriate size standard for each NAICS industry. This methodology consists of guidelines discussed in Table III below. The table includes examples of some NAICS industries with proposed size standards to illustrate the guidelines that SBA intends to follow. Further below in this proposed rule is Table IV, a complete table that shows each NAICS industry with the SIC industry or industries that are related to it. Table IV provides the existing size standard(s) for the associated SIC code(s) and the proposed size standard for each NAICS code, as they result from application of the guidelines set out in Table III.

TABLE III

If the NAICS industry is composed of:	The proposed size standard for the NAICS industry would be:
1. One SIC industry or part of one SIC industry.	The same size standard as for the SIC industry or part.
e.g., NAICS 331221, NAICS 513111, NAICS 513112, NAICS 51312	
2. More than one SIC industry; parts of more than one SIC industry; or one or more SIC industry and part(s) of one or more SIC industry, ***And*** they all have the same size standard.	The same size standard as for those SIC industries or parts of SIC industries.
e.g., NAICS 315234, NAICS 51333, NAICS 561599	
3. More than one SIC industry; parts of more than one SIC industry; or one or more SIC industry and part(s) of one or more SIC industry, ***And*** they do ***not*** all have the same size standard.	The same size standard as for the SIC industry or SIC industry part(s) that most closely matches the economic activity described by the NAICS industry.
e.g., NAICS 332999, NAICS 334119, NAICS 334612, NAICS 44211, NAICS 48721, NAICS 48799, NAICS 48831, NAICS 53212, NAICS 53222, NAICS 561621, NAICS 71151, NAICS 81222, NAICS 81399	
4. One or more parts of an SIC industry for which SBA has established specific size standards (*i.e.*, further segmented).	The same size standard as for that specific SIC industry part.

TABLE III—Continued

If the NAICS industry is composed of:	The proposed size standard for the NAICS industry would be:
e.g., NAICS 23499, NAICS 441229, NAICS 53119, NAICS 54133, NAICS 611512	
5. One or more SIC industries and/or parts of SIC industries that were categorized broadly under the SIC system as Services, Retail Trade, Wholesale Trade or Manufacturing, but are now categorized differently under NAICS.	SBA will (a) apply a size standard measure (*e.g.,* number of employees, annual receipts) typical of the NAICS Sector; and (b) apply the corresponding ''anchor'' size standard. The ''anchor'' size standards are $5 million for Services and Retail Trade, 500 employees for Manufacturing and 100 employees for Wholesale Trade (except for Federal procurement programs, where the standard is 500 employees under the non-manufacturer rule).
e.g., NAICS 311811, NAICS 326212, NAICS 334611, NAICS 339116, NAICS 42199, NAICS 44131.	

The above guidelines, based on SBA's analysis of NAICS, produce a table of small business size standards that accomplishes SBA's objectives. There are approximately 1,175 NAICS industries, and small business size standards for virtually all economic activities within the SIC codes will remain the same in NAICS. Most of the proposed small business size standards result from applying the first two guidelines. SBA will consider modifying the guidelines, if public comments demonstrate persuasive reason to make different guidelines or size standards.

The discussion above explains SBA's reasons for wanting to convert its size standards to NAICS and how it arrived at the proposed size standards. To further assist in this change, SBA requests public comments on its proposal, especially on the following issues:

(1) Is FY 2001 an appropriate effective date?

(2) Are the guidelines SBA used in proposing the new size standards appropriate?

(3) Will there be a significant impact on firms in an industry where some firms will lose size eligibility, or formerly large firms will now become small?

(4) If the answer to (3) is yes, how can SBA eliminate or minimize that potential impact?

Possible Effects of Change From SIC to NAICS Structure

SBA estimates, based on data from the 1992 Economic Census and Federal Procurement Data Center (FPDC), that the new table of small business size standards using the NAICS structure will cause little loss of small business eligibility to firms that participate or are eligible to participate in Federal small business programs. Small business size standards have their greatest applicability in the arena of Federal government procurement of goods and services. Under current size regulations on procurements reserved for small businesses (13 CFR 121.402(b)), a contracting officer must assign the SIC code that best describes the principal purpose of the procurement and provide the small business size standard. The principle behind the regulation will not change because of the new NAICS-based table of the small business size standards. The nature of the product or service will not change, only its numerical designation and category. For most procurements, the size standard will be the same using the correct NAICS code as if an SIC code had been used.

Another important application of size standards involves SBA's loan and financial assistance programs. NAICS-based size standards will apply to these programs in the same way as SIC-based size standards do. Title 13 CFR 121.301(a) will still state that the applicant for financial assistance must not exceed the size standard for the industry in which the applicant combined with its affiliates is primarily engaged and the applicant alone is primarily engaged. An applicant company that must be small under one or more SIC industries will need to be small under the one or more NAICS codes that describes its economic activity. As with government procurement, the use of the proposed NAICS size standards should result in very few firms losing small business eligibility for SBA financial assistance.

A change from the SIC system to NAICS will impact the collection and analysis of program and industry data. Because the SIC system at its lowest level has only four digits, users of the new NAICS size standards will have to adapt their data bases to accommodate the 6-digit NAICS coding structure. Such modifications and other changes associated with this effort will entail costs depending on the type of databases used to collect information. However, costs should be very low in most cases for the conversion of information and data files using prepackaged software programs. For custom software programs, the time and expense to accomplish this transition will vary depending on the nature of the programs, and could be considerable in some cases.

Proposed NAICS Size Standards

Below is Table IV which contains the small business size standards that SBA proposes for industries under NAICS. Table IV shows 1997 NAICS industry codes, 1997 NAICS industry descriptions, and whether the NAICS industry is new, existing or revised. It also provides SBA's proposed size standards for the NAICS industries, and to the right of it the existing size standard for the similar SIC industries, followed by the 1987 SIC code and 1987 SIC industry descriptions. A standard size asterisk before an SIC code indicates the activity is a part of that SIC code. Numerical superscripts refer to Footnotes to Table IV. Existing and proposed size standards are expressed generally in millions of dollars ($ millions) or number of employees (emp #).

Note: The numerical superscripts in the column of proposed size standards refer to footnotes in the *proposed* table of small business size standards included in the proposed rule. The numerical superscripts in the column of *existing* size standards refer to the footnotes that immediately follow this table, which are provided as part of the Supplemental Information.

TABLE IV

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
Sector 11 — Agriculture, Forestry, Fishing and Hunting						
Subsector 111 — Crop Production						
11111	Soybean Farming	E	$0.5	$0.5	0116	Soybeans
11112	Oilseed (except Soybean) Farming	N	$0.5	$0.5	*0119	Cash Grains, NEC (oilseed, except soybean farming)
11113	Dry Pea and Bean Farming	N	$0.5	$0.5	*0119	Cash Grains, NEC (dry pea and bean farms)
11114	Wheat Farming	E	$0.5	$0.5	0111	Wheat
11115	Corn Farming	R	$0.5	$0.5	0115	Corn
				$0.5	*0119	Cash Grains, NEC (popcorn farming)
11116	Rice Farming	E	$0.5	$0.5	0112	Rice
111191	Oilseed and Grain Combination Farming.	N	$0.5	$0.5	*0119	Cash Grains, NEC (oilseed and grain combination farms)
111199	All Other Grain Farming	R	$0.5	$0.5	*0119	Cash Grains, NEC (except popcorn, soybean, and dry pea and bean, and oilseed and grain combination farms)
111211	Potato Farming	E	$0.5	$0.5	0134	Irish Potatoes
111219	Other Vegetable (except Potato) and Melon Farming.	R	$0.5	$0.5	0161	Vegetables and Melons
				$0.5	*0139	Field Crops Except Cash Grains (sweet potatoes and yams)
11131	Orange Groves	N	$0.5	$0.5	*0174	Citrus Fruits (orange groves and farms)
11132	Citrus (except Orange) Groves	R	$0.5	$0.5	*0174	Citrus Fruits (except, orange groves and farms)
111331	Apple Orchards	N	$0.5	$0.5	*0175	Deciduous Tree Fruits (apple orchards and farms)
111332	Grape Vineyards	E	$0.5	$0.5	0172	Grapes
111333	Strawberry Farming	N	$0.5	$0.5	*0171	Berry Crops (strawberry farms)
111334	Berry (except Strawberry) Farming	R	$0.5	$0.5	*0171	Berry Crops (except strawberry farms)
111335	Tree Nut Farming	E	$0.5	$0.5	0173	Tree Nuts
111336	Fruit and Tree Nut Combination Farming.	N	$0.5	$0.5	*0179	Fruits and Tree Nuts, NEC (combination farms)
111339	Other Noncitrus Fruit Farming	R	$0.5	$0.5	*0175	Deciduous Tree Fruits (except apple orchards and farms)
				$0.5	*0179	Fruit and Tree Nuts, NEC (except combination farms)
111411	Mushroom Production	N	$0.5	$0.5	*0182	Food Crops Grown Under Cover (mushrooms, growing of)
111419	Other Food Crops Grown Under Cover.	R	$0.5	$0.5	*0182	Food Crops Grown Under Cover (except mushroom, growing of)
111421	Nursery and Tree Production	N	$0.5	$0.5	*0181	Ornamental Floriculture and Nursery Products (nursery farming)
				$5.0	*0811	Timber Tracts (short rotation woody crops)
111422	Floriculture Production	N	$0.5	$0.5	*0181	Ornamental Floriculture and Nursery Products (floriculture farming)
11191	Tobacco Farming	E	$0.5	$0.5	0132	Tobacco
11192	Cotton Farming	E	$0.5	$0.5	0131	Cotton
11193	Sugarcane Farming	N	$0.5	$0.5	*0133	Sugarcane and Sugar Beets (sugarcane farms)
11194	Hay Farming	N	$0.5	$0.5	*0139	Field Crops, Except Cash Grains, NEC (hay farms)
111991	Sugar Beet Farming	N	$0.5	$0.5	*0133	Sugarcane and Sugar Beets (sugar beet farms)
111992	Peanut Farming	N	$0.5	$0.5	*0139	Field Crops, Except Cash Grains, NEC (peanut farms)
111998	All Other Miscellaneous Crop Farming.	R	$0.5	$0.5	*0139	Field Crops, Except Cash Grains, NEC (except peanut, sweet potato, yam and hay farms)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
				$0.5	0191	General Farms, Primarily Crop
				$5.0	*0831	Forest Products (maple sap, gathering of)
				$3.0	*0919	Miscellaneous Marine Products (plant aquaculture)
				500	*2099	Food Preparations, NEC (reducing maple sap to maple syrup)
Subsector 112—Animal Production						
112111	Beef Cattle Ranching and Farming	R	$0.5	$0.5	0212	Beef Cattle, Except Feedlots (cattle farms)
				$0.5	*0241	Dairy Farms (dairy heifer replacement farms)
112112	Cattle Feedlots	E	$1.5	$1.5	0211	Beef Cattle Feedlots (cattle farms)
11212	Dairy Cattle and Milk Production	R	$0.5	$0.5	*0241	Dairy Farms
11221	Hog and Pig Farming	E	$0.5	$0.5	0213	Hogs
11231	Chicken Egg Production	E	$9.0	$9.0	0252	Chicken Eggs
11232	Broilers and Other Meat Type Chicken Production.	E	$0.5	$0.5	0251	Broiler, Fryers, and Roaster Chickens
11233	Turkey Production	E	$0.5	$0.5	0253	Turkey and Turkey Eggs
11234	Poultry Hatcheries	E	$0.5	$0.5	0254	Poultry Hatcheries
11239	Other Poultry Production	E	$0.5	$0.5	0259	Poultry and Eggs, NEC
11241	Sheep Farming	N	$0.5	$0.5	*0214	Sheep and Goats (sheep farms)
11242	Goat Farming	N	$0.5	$0.5	*0214	Sheep and Goats (goat farms)
112511	Finfish Farming and Fish Hatcheries.	N	$0.5	$0.5	*0273	Animal Aquaculture (finfish farms)
				$3.0	*0921	Fish Hatcheries and Preserves (finfish hatcheries)
112512	Shellfish Farming	N	$0.5	$0.5	*0273	Animal Aquaculture (shellfish farms)
				$3.0	*0921	Fish Hatcheries and Preserves (shellfish hatcheries)
112519	Other Animal Aquaculture	R	$0.5	$0.5	*0273	Animal Aquaculture (except finfish and shellfish)
11291	Apiculture	N	$0.5	$0.5	*0279	Animal Specialties, NEC (apiculture)
11292	Horse and Other Equine Production.	E	$0.5	$0.5	0272	Horse and Other Equine
11293	Fur-Bearing Animal and Rabbit Production.	E	$0.5	$0.5	0271	Fur-Bearing Animals and Rabbits
11299	All Other Animal Production	R	$0.5	$0.5	0219	General Livestock, Except Dairy and Poultry
				$0.5	*0279	Animal Specialties, NEC (except apiculture)
				$0.5	0291	General Farms, Primarily Livestock and Animal Specialties
Subsector 113—Forestry and Logging						
11311	Timber Tract Operations	R	$5.0	$5.0	*0811	Timber Tracts (long term timber farms)
11321	Forest Nurseries and Gathering of Forest Products.	E	$5.0	$5.0	*0831	Forest Nurseries and Gathering of Forest Products (forest products, except gathering of maple sap)
11331	Logging	E	500	500	2411	Logging
Subsector 114—Fishing, Hunting and Trapping						
114111	Finfish Fishing	E	$3.0	$3.0	0912	Finfish
114112	Shellfish Fishing	E	$3.0	$3.0	0913	Shellfish
114119	Other Marine Fishing	R	$3.0	$3.0	*0919	Miscellaneous Marine Products (except plant aquaculture)
11421	Hunting and Trapping	E	$3.0	$3.0	0971	Hunting and Trapping, and Game Propagation

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
Subsector 115 — Support Activities for Agriculture and Forestry						
115111	Cotton Ginning	E	$5.0	$5.0	0724	Cotton Ginning
115112	Soil Preparation, Planting, and Cultivating.	R	$5.0	$5.0	0711	Soil Preparation Services
				$5.0	*0721	Crop Planting, Cultivating, and Protecting (other)
115113	Crop Harvesting, Primarily by Machine.	E	$5.0	$5.0	0722	Crop Harvesting, Primarily by Machine
115114	Postharvest Crop Activities (except Cotton Ginning).	E	$5.0	$5.0	0723	Crop Preparation Services For Market, Except Cotton Ginning
115115	Farm Labor Contractors and Crew Leaders.	E	$5.0	$5.0	0761	Farm Labor Contractors and Crew Leaders
115116	Farm Management Services	E	$5.0	$5.0	0762	Farm Management Services
11521	Support Activities for Animal Production.	N	$5.0	$5.0	*0751	Livestock Services, Except Veterinary (except custom slaughtering)
				$5.0	*0752	Animal Specialty Services, Except Veterinary (horses and equines services and animal production breeding)
				[9] $5.0	*7699	Repair Services, NEC (farriers)
11531	Support Activities for Forestry	R	$5.0	$5.0	0851	Forestry Services
Sector 21 — Mining						
Subsector 211 — Oil and Gas Extraction						
211111	Crude Petroleum and Natural Gas Extraction.	E	500	500	1311	Crude Petroleum and Natural Gas
211112	Natural Gas Liquid Extraction	E	500	500	1321	Natural Gas Liquids
Subsector 212 — Mining (except Oil and Gas)						
212111	Bituminous Coal and Lignite Surface Mining.	E	500	500	1221	Bituminous Coal and Lignite Surface Mining
212112	Bituminous Coal Underground Mining.	E	500	500	1222	Bituminous Coal Underground Mining
212113	Anthracite Mining	E	500	500	1231	Anthracite Mining
21221	Iron Ore Mining	E	500	500	1011	Iron Ores
212221	Gold Ore Mining	E	500	500	1041	Gold Ores
212222	Silver Ore Mining	E	500	500	1044	Silver Ores
212231	Lead Ore and Zinc Ore Mining	E	500	500	1031	Lead and Zinc Ores
212234	Copper Ore and Nickel Ore Mining	R	500	500	1021	Copper Ores
			500	500	*1061	Ferroalloy Ores, Except Vanadium (nickel)
212291	Uranium-Radium-Vanadium Ore Mining.	E	500	500	1094	Uranium-Radium-Vanadium Ores
212299	All Other Metal Ore Mining	R	500	500	*1061	Ferroalloy Ores, Except Vanadium (other ferroalloys except nickel)
			500	500	1099	Miscellaneous Metal Ores, NEC
212311	Dimension Stone Mining and Quarrying.	E	500	500	1411	Dimension Stone
212312	Crushed and Broken Limestone Mining and Quarrying.	E	500	500	1422	Crushed and Broken Limestone
212313	Crushed and Broken Granite Mining and Quarrying.	E	500	500	1423	Crushed and Broken Granite
212319	Other Crushed and Broken Stone Mining and Quarrying.	R	500	500	1429	Crushed and Broken Stone, NEC
			500	500	*1499	Miscellaneous Nonmetallic Minerals, Except Fuels (bituminous limestone and bituminous sandstone)
212321	Construction Sand and Gravel Mining.	E	500	500	1442	Construction Sand and Gravel
212322	Industrial Sand Mining	E	500	500	1446	Industrial Sand
212324	Kaolin and Ball Clay Mining	E	500	500	1455	Kaolin and Ball Clay

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
212325	Clay and Ceramic and Refractory Minerals Mining.	E	500	500	1459	Clay, Ceramic, and Refractory Minerals, NEC
212391	Potash, Soda, and Borate Mineral Mining.	E	500	500	1474	Potash, Soda, and Borate Minerals
212392	Phosphate Rock Mining	E	500	500	1475	Phosphate Rock
212393	Other Chemical and Fertilizer Mineral Mining.	E	500	500	1479	Chemical and Fertilizer Mineral Mining, NEC
212399	All Other Nonmetallic Mineral Mining.	R	500	500	*1499	Miscellaneous Nonmetallic Minerals, Except Fuels (except bituminous limestone and bituminous sandstone)
Subsector 213—Support Activities for Mining						
213111	Drilling Oil and Gas Wells	E	500	500	1381	Drilling Oil and Gas Wells
213112	Support Activities for Oil and Gas Operations.	R	$5.0	$5.0	*1382	Oil and Gas Field Exploration Services (except geophysical mapping and surveying and aerial geophysical exploration)
				$5.0	1389	Oil and Gas Field Services, NEC
213113	Support Activities for Coal Mining	E	$5.0	$5.0	1241	Coal Mining Services
213114	Support Activities for Metal Mining	R	$5.0	$5.0	*1081	Metal Mining Services (except geophysical surveying)
213115	Support Activities for Nonmetallic Minerals (except Fuels).	E	$5.0	$5.0	*1481	Nonmetallic Minerals Services, Except Fuels (except geophysical surveying)
Sector 22—Utilities						
Subsector 221—Utilities						
221111	Hydroelectric Power Generation ...	N	4 mil megawatt hours [1]	4 mil megawatt hours	*4911	Electric Services (hydroelectric power generation)
				$5.0	*4931	Electric and Other Services Combined (hydroelectric power generation)
				$5.0	*4939	Combination Utilities, NEC (hydroelectric power generation)
221112	Fossil Fuel Electric Power Generation.	N	4 mil megawatt hours [1]	4 mil megawatt hours	*4911	Electric Services (fossil fuel power generation)
				$5.0	*4931	Electric and Other Services Combined (fossil fuel power generation)
				$5.0	*4939	Combination Utilities, NEC (fossil fuel power generation)
221113	Nuclear Electric Power Generation	N	4 mil megawatt hours [1]	4 mil megawatt hours	*4911	Electric Services (nuclear electric power generation)
				$5.0	*4931	Electric and Other Services Combined (nuclear power generation)
				$5.0	*4939	Combination Utilities, NEC (nuclear power generation)
221119	Other Electric Power Generation ..	N	4 mil megawatt hours [1]	4 mil megawatt hours	*4911	Electric Services (other electric power generation)
				$5.0	*4931	Electric and Other Services Combined (other electric power generation)
				$5.0	*4939	Combination Utilities, NEC (other electric power generation)
221121	Electric Bulk Power Transmission and Control.	N	4 mil megawatt hours [1]	4 mil megawatt hours	*4911	Electric Services (electric power transmission and control)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
				$5.0	*4931	Electric and Other Services Combined (electric power transmission and control)
				$5.0	*4939	Combination Utilities, NEC (electric power transmission and control)
221122	Electric Power Distribution	N	4 mil megawatt hours [1]	4 mil megawatt hours	*4911	Electric Services (electric power distribution)
				$5.0	*4931	Electric and Other Services Combined (electric power distribution)
				$5.0	*4939	Combination Utilities, NEC (electric power distribution)
22121	Natural Gas Distribution	R	500	$5.0	*4923	Natural Gas Transmission and Distribution (distribution)
				500	4924	Natural Gas Distribution
				$5.0	4925	Mixed, Manufactured, or Liquefied Petroleum Gas Production and/or Distribution (natural gas distribution)
				$5.0	*4931	Electronic and Other Services Combined (natural gas distribution)
				$5.0	4932	Gas and Other Services Combined (natural gas distribution)
				$5.0	*4939	Combination Utilities, NEC (natural gas distribution)
22131	Water Supply and Irrigation Systems.	R	$5.0	$5.0	4941	Water Supply
				$5.0	4971	Irrigation Systems
22132	Sewage Treatment Facilities	E	$5.0	$5.0	4952	Sewerage Systems
22133	Steam and Air-Conditioning Supply.	E	$9.0	$9.0	4961	Steam and Air-Conditioning Supply
Sector 23 — Construction						
Subsector 233 — Building, Developing and General Contracting						
23311	Land Subdivision and Land Development.	E	$5.0	$5.0	6552	Land Subdividers and Developers, Except Cemeteries
23321	Single Family Housing Construction.	R	$17.0	$17.0	1521	General contractors-Single-Family Houses
				$17.0	*1531	Operative Builders (single-family housing construction)
23322	Multifamily Housing Construction ..	R	$17.0	$17.0	*1522	General Contractors-Residential Building, Other Than Single-Family (except hotel and motel construction)
				$17.0	*1531	Operative Builders (multi-family housing construction)
23331	Manufacturing and Industrial Building Construction.	R	$17.0	$17.0	*1531	Operative Builders (manufacturing and light industrial building construction)
				$17.0	*1541	General Contractors-Industrial Buildings and Warehouses (except warehouse construction)
23332	Commercial and Institutional Building Construction.	R	$17.0	$17.0	*1522	General Contractors-Residential Building Other than Single-Family (hotel and motel construction)
				$17.0	*1531	Operative Builders (commercial and institutional building construction)
				$17.0	*1541	General Contractors-Industrial Buildings and Warehouses (warehouse construction)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
				$17.0	1542	General Contractor-Nonresidential Buildings, Other than Industrial Buildings and Warehouses
Subsector 234—Heavy Construction						
23411	Highway and Street Construction ..	E	$17.0	$17.0	1611	Highway and Street Construction, Except Elevated Highways
23412	Bridge and Tunnel Construction	E	$17.0	$17.0	1622	Bridge, Tunnel, and Elevated Highway Construction
23491	Water, Sewer, and Pipeline Construction.	N	$17.0	$17.0	*1623	Water, Sewer, Pipeline, and Communications and Power Line Construction (water and sewer mains and pipelines construction)
23492	Power and Communication Transmission Line Construction.	N	$17.0	$17.0	*1623	Water, Sewer, Pipelines, and Communications and Power Line Construction (communications and power line construction)
23493	Industrial Nonbuilding Structure Construction.	N	$17.0	$17.0	*1629	Heavy Construction, NEC (industrial nonbuilding structures construction)
23499	All Other Heavy Construction	R	$17.0	$17.0	*1629	Heavy Construction, NEC (except industrial nonbuilding structures construction)
				$5.0	*7353	Construction Equipment Rental and Leasing (with operator)
	Except dredging and Surface Cleanup Activities.		[2] $13.5	[1] $13.5		Except dredging and Surface Cleanup Activities
Subsector 235—Special Trade Contractors [13]						
23511	Plumbing, Heating and Air-Conditioning Contractors.	E	$7.0	$7.0	1711	Plumbing, Heating and Air-Conditioning
23521	Painting and Wall Covering Contractors.	R	$7.0	$7.0	1721	Painting and Paper Hanging
				$7.0	*1799	Special Trade Contractors, NEC (paint and wallpaper, stripping and wallpaper removal contractors)
23531	Electrical Contractors	R	$7.0	$7.0	*1731	Electrical Work (except burglar and fire alarm installation)
23541	Masonry and Stone Contractors ...	E	$7.0	$7.0	1741	Masonry, Stone Setting and Other Stone Work
23542	Drywall, Plastering, Acoustical and Insulation Contractors.	R	$7.0	$7.0	1742	Plastering, Drywall, Acoustical, and Insulation Work
				$7.0	*1743	Terrazzo, Tile, Marble and Mosaic work (fresco work)
				$7.0	*1771	Concrete Work (stucco construction)
23543	Tile, Marble, Terrazzo and Mosaic Contractors.	R	$7.0	$7.0	*1743	Terrazzo, Tile, Marble, and Mosaic Work (except fresco work)
2355	Carpentry and Floor Contractors					
23551	Carpentry Contractors	E	$7.0	$7.0	1751	Carpentry Work
23552	Floor Laying and Other Floor Contractors.	E	$7.0	$7.0	1752	Floor Laying and Other Floor Work, NEC
23561	Roofing, Siding and Sheet Metal Contractors.	E	$7.0	$7.0	1761	Roofing, Siding, and Sheet Metal Work
23571	Concrete Contractors	R	$7.0	$7.0	*1771	Concrete Work (except stucco construction)
23581	Water Well Drilling Contractors	E	$7.0	$7.0	1781	Water Well Drilling
23591	Structural Steel Erection Contractors.	E	$7.0	$7.0	1791	Structural Steel Erection
23592	Glass and Glazing Contractors	R	$7.0	$7.0	1793	Glass and Glazing Work

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
				$7.0	*1799	Specialty Trade Contractors, NEC (tinting glass work)
23593	Excavation Contractors	E	$7.0	$7.0	1794	Excavation Work
23594	Wrecking and Demolition Contractors.	E	$7.0	$7.0	1795	Wrecking and Demolition Work
23595	Building Equipment and Other Machinery Installation Contractors.	E	$7.0	$7.0	1796	Installation of Erection of Building Equipment, NEC
23599	All Other Special Trade Contractors.	R	$7.0	$7.0	*1799	Special Trade Contractors, NEC (except paint and wallpaper stripping, wall paper removal contractors, and tinting glass work)
	Except Base Housing Maintenance.		[13] $7.0	[12] $7.0		Except Base Housing Maintenance
Sectors 31–33 — Manufacturing						
Subsector 311 — Food Manufacturing						
311111	Dog and Cat Food Manufacturing	E	500	500	2047	Dog and Cat Food
311119	Other Animal Food Manufacturing	R	500	500	*2048	Prepared Feeds and Feed Ingredients for Animals and Fowls, Except Dogs and Cats (except slaughtering animals for pet food)
311211	Flour Milling	R	500	500	*2034	Dehydrated Fruits, Vegetables and Soup Mixes (vegetable flour)
				500	2041	Flour and Other Grain Mill Products
311212	Rice Milling	E	500	500	2044	Rice Milling
311213	Malt Manufacturing	E	500	500	2083	Malt
311221	Wet Corn Milling	E	750	750	2046	Wet Corn Milling
311222	Soybean Processing	R	500	500	*2075	Soybean Oil Mills (soybean processing)
				750	*2079	Shortening, Table Oils, Margarine, and Other Edible Fats and Oils, NEC (processing soybean oil from soybeans crushed in the same establishment)
311223	Other Oilseed Processing	N	1,000	500	*2074	Cottonseed Oil Mills (cottonseed processing)
				750	*2079	Shortening, Table Oils, Margarine and Other Edible Fats and Oils, NEC (processing vegetable oils, except soybeans, from oilseeds crushed in the same establishment)
				1,000	*2076	Vegetable Oil Mills, Except Corn, Cottonseed, and Soybean (oilseed processing)
311225	Fats and Oils Refining and Blending.	R	1,000	500	*2077	Animal and Marine Fats and Oil, NEC (vegetable oil foods)
				500	*2074	Cottonseed Oil Mills (processing purchased cottonseed oil)
				500	*2075	Soybean Oil Mills (processing purchased soybean oil)
				1,000	*2076	Vegetable Oil Mills, Except Corn, Cottonseed, and Soybean (processing purchased vegetable oils)
				750	*2079	Shortening, Table Oils, Margarine, and Other Edible Fats and Oils, NEC (processing fats and oils from purchased fats and oils)
31123	Breakfast Cereal Manufacturing	R	1,000	1,000	*2043	Cereal Breakfast Foods (breakfast cereal)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
311311	Sugarcane Mills	E	500	500	2061	Cane Sugar, Except Refining
311312	Cane Sugar Refining	E	750	750	2062	Cane Sugar Refining
311313	Beet Sugar Manufacturing	E	750	750	2063	Beet Sugar
31132	Chocolate and Confectionery Manufacturing from Cacao Beans.	E	500	500	2066	Chocolate and Cocoa Products
31133	Confectionery Manufacturing from Purchased Chocolate.	N	500	500	*2064	Candy and Other Confectionery Products (chocolate confectionery)
31134	Non-Chocolate Confectionery Manufacturing.	N	500	500	*2064	Candy and Other Confectionery Products (non-chocolate confectionery)
				500	2067	Chewing Gum
				500	*2099	Food Preparations, NEC (marshmallow creme)
311411	Frozen Fruit, Juice and Vegetable Manufacturing.	E	500	500	2037	Frozen Fruits, Fruit Juices, and Vegetables
311412	Frozen Specialty Food Manufacturing.	E	500	500	2038	Frozen Specialties, NEC
311421	Fruit and Vegetable Canning	R	[3] 500	[3] 500	2033	Canned Fruits, Vegetables, Preserves, Jams, and Jellies
				500	*2035	Pickled Fruits and Vegetables, Vegetable Sauces, and Seasonings and Salad Dressings (pickled fruits and vegetables)
311422	Specialty Canning	R	1,000	1,000	*2032	Canned Specialties (except canned puddings)
311423	Dried and Dehydrated Food Manufacturing.	R	500	500	*2034	Dried and Dehydrated Fruits, Vegetables and Soup Mixes (except vegetable flour)
				500	*2099	Food Preparation, NEC (bouillon)
311511	Fluid Milk Manufacturing	E	500	500	2026	Fluid Milk
311512	Creamery Butter Manufacturing	E	500	500	2021	Creamery Butter
311513	Cheese Manufacturing	E	500	500	2022	Natural, Processed, and Imitation Cheese
311514	Dry, Condensed, and Evaporated Dairy Product Manufacturing.	E	500	500	2023	Dry, Condensed and Evaporated Dairy Products
31152	Ice Cream and Frozen Dessert Manufacturing.	E	500	500	2024	Ice Cream and Frozen Desserts
311611	Animal (except Poultry) Slaughtering.	R	500	$5.0	*0751	Livestock Services, Except Veterinary (custom slaughtering)
				500	2011	Meat Packing Plants
				500	*2048	Prepared Feeds and Feed Ingredients for Animals and Fowls, Except Dogs and Cats (animal slaughtering for pet food)
311612	Meat Processed from Carcasses	R	500	500	2013	Sausages and Other Prepared Meats
				100	*5147	Meat and Meat Products (boxed beef)
311613	Rendering and Meat By-product Processing.	N	500	500	*2077	Animal and Marine Fats and Oils (animal fats and oils)
311615	Poultry Processing	R	500	500	*2015	Poultry Slaughtering and Processing (poultry processing)
311711	Seafood Canning	R	500	500	*2077	Animal and Marine Fats and Oils (canned marine fats and oils)
				500	2091	Canned and Cured Fish and Seafood
311712	Fresh and Frozen Seafood Processing.	R	500	500	*2077	Animal and Marine Fats and Oils (fresh and frozen marine fats and oils)
				500	2092	Prepared Fresh or Frozen Fish and Seafood
311811	Retail Bakeries	N	500	$5.0	*5461	Retail Bakeries (bread, cake and related products baked and sold on premise)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
311812	Commercial Bakeries	R	500	500	2051	Bread and Other Bakery Products, Except Cookies and Crackers
				750	*2052	Cookies and Crackers (unleavened bread)
311813	Frozen Cakes, Pies, and Other Pastries Manufacturing.	E	500	500	2053	Frozen Bakery Products, Except Bread
311821	Cookie and Cracker Manufacturing	R	750	750	*2052	Cookies and Crackers (except unleavened bread and pretzels)
311822	Flour Mixes and Dough Manufacturing from Purchased Flour.	E	500	500	2045	Prepared Flour Mixes and Doughs
311823	Dry Pasta Manufacturing	E	500	500	2098	Macaroni, Spaghetti, Vermicelli and Noodles
31183	Tortilla Manufacturing	N	500	500	*2099	Food Preparations, NEC (tortillas)
311911	Roasted Nuts and Peanut Butter Manufacturing.	R	500	500	2068	Salted and Roasted Nuts and Seeds
				500	*2099	Food Preparations, NEC (peanut butter)
311919	Other Snack Food Manufacturing	R	500	750	*2052	Cookies and Crackers (pretzels)
				500	2096	Potato Chips, Corn Chips, and Similar Snacks
31192	Coffee and Tea Manufacturing	N	500	1,000	*2043	Cereal Breakfast Foods (coffee substitute)
				500	*2095	Roasted Coffee (roasted coffee)
				500	*2099	Food Preparations, NEC (tea)
31193	Flavoring Syrup and Concentrate Manufacturing.	R	500	500	*2087	Flavoring Extracts and Flavoring Syrups (flavoring syrup and concentrate)
311941	Mayonnaise, Dressing and Other Prepared Sauce Manufacturing.	N	500	500	*2035	Pickled Fruits and Vegetables, Vegetable Seasonings, and Sauces and Salad Dressings (sauces and salad dressing)
				500	*2099	Food Preparations, NEC (vinegar)
311942	Spice and Extract Manufacturing ..	N	500	500	*2087	Flavoring Extracts and Flavoring Syrups (flavoring extracts)
				500	*2095	Roasted Coffee (coffee extracts)
				500	*2099	Food Preparations, NEC (spices, dip mix, salad dressing mix, and seasoning mix)
				500	*2899	Chemical Preparations, NEC (table salt)
31199	All Other Food Manufacturing					
311991	Perishable Prepared Food Manufacturing.	N	500	500	*2099	Food Preparations, NEC (perishable prepared food)
311999	All Other Miscellaneous Food Manufacturing.	R	500	500	*2015	Poultry Slaughtering and Processing (egg processing)
				1,000	*2032	Canned Specialties (canned puddings)
				500	*2087	Flavoring Extracts and Flavoring Syrups (powered drink mix)
				500	*2099	Food Preparations, NEC (except bouillon, marshmallow creme, spices, extracts, peanut butter, perishable prepared foods, tortillas, tea, spices, dip mix, salad dressing mix, seasoning mix, and vinegar)
Subsector 312—Beverage and Tobacco Product Manufacturing						
312111	Soft Drink Manufacturing	R	500	500	*2086	Bottled and Canned Soft Drinks and Carbonated Water (except bottled water)
312112	Bottled Water Manufacturing	N	500	500	*2086	Bottled and Canned Soft Drinks and Carbonated Water (bottled water)
312113	Ice Manufacturing	E	500	500	2097	Manufactured Ice

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
31212	Breweries	E	500	500	2082	Malt Beverages
31213	Wineries	E	500	500	2084	Wines, Brandy, and Brandy Spirits
31214	Distilleries	E	750	750	2085	Distilled and Blended Liquors
31221	Tobacco Stemming and Redrying	R	500	500	*2141	Tobacco Stemming and Redrying (redrying and stemming)
312221	Cigarette Manufacturing	E	1,000	1,000	2111	Cigarettes
312229	Other Tobacco Product Manufacturing.	N	500	500	2121	Cigars
				500	2131	Chewing and Smoking Tobacco and Snuff
				500	*2141	Tobacco Stemming and Redrying (reconstituted tobacco)
Subsector 313—Textile Mills						
313111	Yarn Spinning Mills	R	500	500	2281	Yarn Spinning Mills
				500	*2299	Textile Goods, NEC (yarn of flax, hemp, jute, and ramie)
313112	Yarn Texturing, Throwing and Twisting Mills.	R	500	500	*2282	Yarn Texturing, Throwing, Winding Mills (except spooling purchased yarns)
313113	Thread Mills	R	500	500	*2284	Thread Mills (except finishing)
				500	*2299	Textile Goods, NEC (thread of hemp, linen, and ramie)
31321	Broadwoven Fabric Mills	N	1,000	1,000	2211	Broadwoven Fabric Mills, Cotton
				500	2221	Broadwoven Fabric Mills, Manmade Fiber and Silk
				500	*2231	Broadwoven Fabric Mills, Wool (Including Dyeing and Finishing)(except wool finishing)
				500	*2299	Textile Goods, NEC (broadwoven fabrics of jute, linen, hemp, and ramie)
313221	Narrow Fabric Mills	R	500	500	2241	Narrow Fabric and Other Smallware Mills: Cotton, Wool, Silk and Manmade Fiber
				500	*2299	Textile Goods, NEC (narrow woven fabric of jute, linen, hemp, and ramie)
313222	Schiffli Machine Embroidery	E	500	500	2397	Schiffli Machine Embroideries
31323	Nonwoven Fabric Mills	R	500	500	2297	Nonwoven Fabrics
				500	*2299	Textile Goods, NEC (nonwoven felt)
313241	Weft Knit Fabric Mills	R	500	500	*2257	Weft Knit Fabric Mills (except finishing)
				500	*2259	Knitting Mills NEC (finished articles of weft knit fabric)
313249	Other Knit Fabric and Lace Mills ...	R	500	500	*2258	Lace and Warp Knit Fabric Mills (except finishing)
				500	*2259	Knitting Mills NEC (finished articles of warp knit fabric)
313311	Broadwoven Fabric Finishing Mills	N	1,000	500	*2231	Broadwoven Fabric Mills, Wool (wool broadwoven fabric finishing)
				1,000	2261	Finishers of Broadwoven Fabrics of Cotton
				500	2262	Finishers of Broadwoven Fabrics of Manmade Fiber and Silk
				500	*2269	Finishers of Textiles, NEC (broadwoven fabric finishing)
				100	*5131	Piece Goods and Notions (broadwoven converters)
313312	Textile and Fabric Finishing (except Broadwoven Fabric) Mills.	N	500	500	*2231	Broadwoven Fabric Mills, Wool (wool finishing except broadwoven fabric)
				500	*2257	Weft Knit Fabric Mills (finishing)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
				500	*2258	Lace and Warp Knit Fabric Mills (finishing)
				500	*2269	Finishers of Textiles, NEC (except broadwoven fabric finishing)
				500	*2282	Yarn Texturizing, Throwing, Twisting, and Winding Mills (spooling purchased yarn)
				500	*2284	Thread Mills (thread finishing)
				500	*2299	Textile Goods, NEC (finishing hard fiber thread and yarn)
				100	*5131	Piece Goods and Notions (converters, except broadwoven)
31332	Fabric Coating Mills	R	1,000	1,000	2295	Coated Fabrics, Not Rubberized
				500	*3069	Fabricated Rubber Products, NEC (rubberized fabric)
Subsector 314—Textile Product Mills						
31411	Carpet and Rug Mills	E	500	500	2273	Carpets and Rugs
314121	Curtain and Drapery Mills	R	500	500	2391	Curtains and Draperies
				$5.0	*5714	Drapery, Curtain, and Upholstery Stores (custom drapes)
314129	Other Household Textile Product Mills.	R	500	500	*2392	Housefurnishings, Except Curtains and Draperies (except mops and bags)
314911	Textile Bag Mills	R	500	500	*2392	Housefurnishings, Except Curtains and Draperies (blanket, laundry, and wardrobe bags)
				500	2393	Textile Bags
314912	Canvas and Related Product Mills	E	500	500	2394	Canvas and Related Products
314991	Rope, Cordage and Twine Mills	E	500	500	2298	Cordage and Twine
314992	Tire Cord and Tire Fabric Mills	E	1,000	1,000	2296	Tire Cord and Fabrics
314999	All Other Miscellaneous Textile Product Mills.	R	500	500	*2299	Textile Goods, NEC (other textile products)
				500	*2395	Pleating, Decorative and Novelty Stitching, and Tucking for the Trade (except apparel contractors)
				500	*2396	Automotive Trimmings, Apparel Findings, and Related Products (textile products except automotive and apparel trim and printing on apparel)
				500	*2399	Fabricated Textile Products, NEC (except apparel, automotive seat belts, and seat and tire covers)
Subsector 315—Apparel Manufacturing						
315111	Sheer Hosiery Mills	R	500	500	2251	Women's Full-Length and Knee-Length Hosiery, Except socks
				500	*2252	Hosiery, NEC (girls' hosiery)
315119	Other Hosiery and Sock Mills	R	500	500	*2252	Hosiery, NEC (socks)
315191	Outerwear Knitting Mills	R	500	500	2253	Knit Outerwear Mills
				500	*2259	Knitting Mills, NEC (gloves and mittens)
315192	Underwear and Nightwear Knitting Mills.	R	500	500	2254	Knit Underwear and Nightwear Mills
				500	*2259	Knitting Mills, NEC (girdles)
315211	Men's and Boys' Cut and Sew Apparel Contractors.	N	500	500	*2311	Men's and Boys' Suits, Coats, and Overcoats (contractors)
				500	*2321	Men's and Boys' Shirts, Except Work Shirts (contractors)
				500	*2322	Men's and Boys' Underwear and Nightwear (contractors)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
				500	*2325	Men's and Boys' Trousers and Slacks (contractors)
				500	*2326	Men's and Boys' Work Clothing (contractors)
				500	*2329	Men's and Boys' Clothing, NEC (contractors)
				500	*2341	Women's, Misses', Children's, and Infants' Underwear and Nightwear (boys' contractors)
				500	*2361	Girls', Children's, and Infants' Dresses, Blouses and Shirts (boys' contractors)
				500	*2369	Girls', Children's, and Infants' Outerwear, NEC (boys' contractors)
				500	*2384	Robes and Dressing Gowns (men's and boys' contractors)
				500	*2385	Waterproof Outerwear (men's and boys' contractors)
				500	*2389	Apparel and Accessories, NEC (contractors)
				500	*2395	Pleating, Decorative and Novelty Stitching, and Tucking for the Trade (men's and boy's apparel contractors)
315212	Women's, Girls', and Infants' Cut and Sew Apparel Contractors.	N	500	500	*2331	Women's, Misses', and Juniors' Blouses and Shirts (contractors)
				500	*2335	Women's, Misses' and Juniors' Dresses (contractors)
				500	*2337	Women's, Misses', and Juniors' Suits, Skirts, and Coats (contractors)
				500	*2339	Women's, Misses', and Juniors' Outerwear, NEC (contractors)
				500	*2341	Women's, Misses', Children's, and Infants' Underwear and Nightwear (contractors)
				500	*2342	Brassieres, Girdles, and Allied Garments (contractors)
				500	*2361	Girls', Children's, and Infants' Dresses, Blouses, and Shirts (girls' contractors)
				500	*2369	Girls', Children's, and Infants' Outerwear, NEC (girls' and infants' contractors)
				500	*2384	Robes and Dressing Gowns (women's, girls', and infants' contractors)
				500	*2385	Waterproof Outerwear (women's, girls', and infants' contractors)
				500	*2389	Apparel and Accessories, NEC (contractors)
				500	*2395	Pleating, Decorative and Novelty Stitching, and Tucking for the Trade (women's and girls' apparel contractors)
315221	Men's and Boys' Cut and Sew Underwear and Nightwear Manufacturing.	R	500	500	*2322	Men's and Boys' Underwear and Nightwear (except contractors)
				500	*2341	Women's, Misses', Children's, and Infants' Underwear and Nightwear (boys' except contractors)
				500	*2369	Girls', Children's, and Infants' Outerwear, NEC (boys' robes except contractors)
				500	*2384	Robes and Dressing Gowns (men's except contractors)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
315222	Men's and Boys' Cut and Sew Suit, Coat and Overcoat Manufacturing.	R	500	500	*2311	Men's and Boys' Suits, Coats, and Overcoats (except contractors)
				500	*2369	Girls', Children's, and Infants' Outerwear, NEC (boys' suits and coats except contractors)
				500	*2385	Waterproof Outerwear (men's and boys' raincoats except contractors)
315223	Men's and Boys' Cut and Sew Shirt (except Work Shirt) Manufacturing.	R	500	500	*2321	Men's and Boys' Shirts, Except Work Shirts (except contractors)
				500	*2361	Girls', Children's, and Infants' Dresses, Blouses, and Shirts (boys' shirts except contractors)
315224	Men's and Boys' Cut and Sew Trouser, Slack and Jean Manufacturing.	R	500	500	*2325	Men's and Boys' Trousers and Slacks (except contractors)
				500	*2369	Girls', Children's, and Infants' Outerwear, NEC (boys' trousers, slacks, and jeans except contractors)
315225	Men's and Boys' Cut and Sew Work Clothing Manufacturing.	R	500	500	*2326	Men's and Boys' Work Clothing (except contractors)
315228	Men's and Boys' Cut and Sew Other Outerwear Manufacturing.	R	500	500	*2329	Men's and Boys' Clothing, NEC (men's and boys' other outerwear except contractors)
				500	*2369	Girls', Children's, and Infants' Outerwear, NEC (boys' other outerwear except contractors)
				500	*2385	Waterproof Outerwear (except contractors)
315231	Women's and Girls' Cut and Sew Lingerie, Loungewear and Nightwear Manufacturing.	R	500	500	*2341	Women's, Misses', Children's, and Infants' Underwear and Nightwear (women and girls' except contractors)
				500	*2342	Brassieres, Girdles, and Allied Garments (except contractors)
				500	*2369	Girls', Children's, and Infants' Outerwear, NEC (girls' robes except contractors)
				500	*2384	Robes and Dressing Gowns (women's except contractors)
				500	*2389	Apparel and Accessories, NEC (garters and garter belts)
315232	Women's and Girls' Cut and Sew Blouse and Shirt Manufacturing.	R	500	500	*2331	Women's, Misses', and Juniors' Blouses and Shirts (except contractors)
				500	*2361	Girls', Children's, and Infants' Dresses, Blouses and Shirts (girls' blouses and shirts except contractors)
315233	Women's and Girls' Cut and Sew Dress Manufacturing.	R	500	500	*2335	Women's, Misses', and Juniors' Dresses (except contractors)
				500	*2361	Girls', Children's, and Infants' Dresses, Blouses and Shirts (girls' dresses except contractors)
315234	Women's and Girls' Cut and Sew Suit, Coat, Tailored Jacket and Skirt Manufacturing.	R	500	500	*2337	Women's, Misses', and Juniors' Suits, Skirts, and Coats (except contractors)
				500	*2369	Girls', Children's, and Infants' Outerwear, NEC (girls' suits, coats, jackets, and skirts except contractors)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
				500	*2385	Waterproof Outerwear (women's and girls' raincoats except contractors)
315239	Women's and Girls' Cut and Sew Other Outerwear Manufacturing.	R	500	500	*2339	Women's, Misses', and Juniors' Outerwear, NEC (except contractors)
				500	*2369	Girls', Children's, and Infants' Outerwear, NEC (girls' except contractors)
				500	*2385	Waterproof Outerwear (other women's and girls' outerwear except contractors)
315291	Infants' Cut and Sew Apparel Manufacturing.	R	500	500	*2341	Women's, Misses', Children's, and Infants' Underwear and Nightwear (infants' except contractors)
				500	*2361	Girls', Children's, and Infants' Dresses, Blouses, and Shirts (infants' except contractors)
				500	*2369	Girls', Children's, and Infants' Outerwear, NEC (infants' except contractors)
				500	*2385	Waterproof Outerwear (infants' outerwear except contractors)
315292	Fur and Leather Apparel Manufacturing.	R	500	500	2371	Fur Goods
				500	2386	Leather and Sheep-lined Clothing
315299	All Other Cut and Sew Apparel Manufacturing.	R	500	500	*2329	Men's and Boys' Outerwear, NEC (athletic uniforms except contractors)
				500	*2339	Women's, Misses', and Juniors' Outerwear, NEC (athletic uniforms except contractors)
				500	*2389	Apparel and Accessories, NEC (academic and clerical outerwear, except contractors)
315991	Hat, Cap, and Millinery Manufacturing.	E	500	500	2353	Hats, Caps, and Millinery
315992	Glove and Mitten Manufacturing ...	R	500	500	2381	Dress and Work Gloves, Except Knit and All-Leather
				500	3151	Leather Gloves and Mittens
315993	Men's and Boys' Neckwear Manufacturing.	E	500	500	2323	Men's and Boys' Neckwear
315999	Other Apparel Accessories and Other Apparel Manufacturing.	N	500	500	*2339	Women's, Misses', and Juniors' Outerwear, NEC (scarves)
				500	*2385	Waterproof Outerwear (aprons, bibs, and other miscellaneous waterproof items)
				500	2387	Apparel Belts
				500	*2389	Apparel and Accessories, NEC (handkerchiefs, arm bands, etc.)
				500	*2396	Automotive Trimmings, Apparel Findings, and Related Products (apparel findings and trimming)
				500	*2399	Fabricated Textile Products, NEC (apparel and apparel accessories)
Subsector 316 — Leather and Allied Product Manufacturing						
31611	Leather and Hide Tanning and Finishing.	R	500	500	3111	Leather Tanning and Finishing
				500	*3999	Manufacturing Industries, NEC (fur dressing and finishing)
316211	Rubber and Plastics Footwear Manufacturing.	E	1,000	1,000	3021	Rubber and Plastics Footwear

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
316212	House Slipper Manufacturing	E	500	500	3142	House Slippers
316213	Men's Footwear (except Athletic) Manufacturing.	E	500	500	3143	Men's Footwear, Except Athletic
316214	Women's Footwear (except Athletic) Manufacturing.	E	500	500	3144	Women's Footwear, Except Athletic
316219	Other Footwear Manufacturing	E	500	500	3149	Footwear Except Rubber, NEC
316991	Luggage Manufacturing	E	500	500	3161	Luggage
316992	Women's Handbag and Purse Manufacturing.	E	500	500	3171	Women's Handbags and Purses
316993	Personal Leather Good (except Women's Handbag and Purse) Manufacturing.	E	500	500	3172	Personal Leather Goods, Except Women's Handbags and Purses
316999	All Other Leather Good Manufacturing.	R	500	500	*3131	Boot and Shoe Cut Stock and Findings (except wood heels and metal buckles)
				500	3199	Leather Goods, NEC
Subsector 321—Wood Product Manufacturing						
321113	Sawmills	R	500	500	*2421	Sawmills and Planing Mills, General
				500	*2429	Special Product Sawmills, NEC
321114	Wood Preservation	E	500	500	2491	Wood Preserving
321211	Hardwood Veneer and Plywood Manufacturing.	E	500	500	2435	Hardwood Veneer and Plywood
321212	Softwood Veneer and Plywood Manufacturing.	E	500	500	2436	Softwood Veneer and Plywood
321213	Engineered Wood Member (except Truss) Manufacturing.	R	500	500	*2439	Structural Wood Members, NEC (except trusses)
321214	Truss Manufacturing	N	500	500	*2439	Structural Wood Members, NEC (trusses)
321219	Reconstituted Wood Product Manufacturing.	E	500	500	2493	Reconstituted Wood Products
321911	Wood Window and Door Manufacturing.	N	500	500	*2431	Millwork (wood windows and doors)
321912	Cut Stock, Resawing Lumber, and Planing.	N	500	500	*2421	Sawmills and Planing Mills, General (lumber manufacturing from purchased lumber, softwood cut stock, wood lath, fence pickets, and planing mill products)
				500	*2426	Hardwood Dimension and Flooring Mills (except flooring)
				500	*2429	Special Product Sawmills, NEC (stave manufacturing from purchased lumber)
				500	*2439	Structural Wood Members, NEC (lumber member manufacturing from purchased lumber)
321918	Other Millwork (including Flooring)	R	500	500	*2426	Hardwood Dimension and Flooring Mills (hardwood flooring)
				500	*2421	Sawmills and Planing Mills, General (softwood flooring)
				500	*2431	Millwork (except wood doors and windows)
32192	Wood Container and Pallet Manufacturing.	N	500	500	2441	Nailed and Lock Corner Wood Boxes and Shook
				500	2448	Wood Pallets and Skids
				500	2449	Wood Containers, NEC
				500	*2499	Wood Products, NEC (wood tubs and vats, jewelry and cigar boxes)
321991	Manufactured Home (Mobile Home) Manufacturing.	E	500	500	2451	Mobile Homes
321992	Prefabricated Wood Building Manufacturing.	E	500	500	2452	Prefabricated Wood Buildings and Components

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
321999	All Other Miscellaneous Wood Product Manufacturing.	R	500	500	*2426	Hardwood Dimension and Flooring Mills (wood stock and turnings)
				500	*2499	Wood Products, NEC (other wood products)
				500	*3131	Boot and Shoe Cut Stock and Findings (wood heels)
				500	*3999	Manufacturing Industries, NEC (burnt wood articles and other wood products)
				500	*2421	Sawmills and Planing Mills, General (kiln drying)
				500	*2429	Special Product Sawmills, NEC (excelsior and cooperage headings)
Subsector 322—Paper Manufacturing						
32211	Pulp Mills	R	750	750	*2611	Pulp Mills (pulp producing mills only)
322121	Paper (except Newsprint) Mills	R	750	750	*2611	Pulp Mills (pulp mills producing paper)
				750	*2621	Paper Mills (except newsprint mills)
322122	Newsprint Mills	N	750	750	*2621	Paper Mills (newsprint mills)
32213	Paperboard Mills	R	750	750	*2611	Pulp Mills (pulp mills producing paperboard)
				750	2631	Paperboard Mills
322211	Corrugated and Solid Fiber Box Manufacturing.	E	500	500	2653	Corrugated and Solid Fiber Boxes
322212	Folding Paperboard Box Manufacturing.	E	750	750	2657	Folding Paperboard Boxes, Including Sanitary
322213	Setup Paperboard Box Manufacturing.	E	500	500	2652	Setup Paperboard Boxes
322214	Fiber Can, Tube, Drum, and Similar Products Manufacturing.	E	500	500	2655	Fiber Cans, Tubes, Drums, and Similar Products
322215	Non-Folding Sanitary Food Container Manufacturing.	R	750	750	2656	Sanitary Food Containers, Except Folding
				500	*2679	Converted Paper and Paperboard Products, NEC (egg cartons and other containers from purchased paper)
322221	Coated and Laminated Packaging Paper and Plastics Film Manufacturing.	R	500	500	*2671	Packaging Paper and Plastics Film, Coated and Laminated (single-web paper, paper multiweb laminated rolls and sheets for packaging uses)
322222	Coated and Laminated Paper Manufacturing.	R	500	500	2672	Coated and Laminated Paper, NEC
				500	*2679	Converted Paper and Paperboard Products, NEC (wallpaper and gift wrap paper)
322223	Plastics, Foil, and Coated Paper Bag Manufacturing.	R	500	500	*2673	Plastics, Foil, and Coated Paper Bags (coated or multiweb laminated bags)
322224	Uncoated Paper and Multiwall Bag Manufacturing.	E	500	500	2674	Uncoated Paper and Multiwall Bags
322225	Laminated Aluminum Foil Manufacturing for Flexible Packaging Uses.	N	500	500	*3497	Metal Foil and Leaf (laminated aluminum foil rolls and sheets for flexible packaging uses)
322226	Surface-Coated Paperboard Manufacturing.	N	500	500	*2675	Die-Cut Paper and Paperboard and Cardboard (pasted, lined, laminated, or surface-coated paperboard)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
322231	Die-Cut Paper and Paperboard Office Supplies Manufacturing.	N	500	500	*2675	Die-Cut Paper and Paperboard and Cardboard (file folders, tabulating cards, and other paper and paperboard office supplies)
				500	*2679	Converted Paper and Paperboard Products, NEC (paper supplies for business machines and other paper office supplies)
322232	Envelope Manufacturing	E	500	500	2677	Envelopes
322233	Stationery, Tablet, and Related Product Manufacturing.	E	500	500	2678	Stationery, Tablets, and Related Products
322291	Sanitary Paper Product Manufacturing.	E	500	500	2676	Sanitary Paper Products
322299	All Other Converted Paper Product Manufacturing.	R	500	500	*2675	Die-Cut Paper and Paperboard and Cardboard (die-cut paper and paperboard products, except office supplies)
				500	*2679	Converted Paper and Paperboard Products, NEC (other converted paper and paperboard products such as paper filters, crepe paper, and laminated and tiled wallboard)
Subsector 323—Printing and Related Support Activities						
323110	Commercial Lithographic Printing	R	500	500	*2752	Commercial Printing, Lithographic (except quick printing)
				500	*2771	Greeting Cards (lithographic printing of greeting cards)
				500	*2782	Blankbooks, Loose-leaf Binders and Devices (lithographic printing of checkbooks)
				500	*3999	Manufacturing Industries, NEC (lithographic printing of eyeglass frames for the trade)
323111	Commercial Gravure Printing	R	500	500	2754	Commercial Printing, Gravure
				500	*2771	Greeting Cards (gravure printing of greeting cards)
				500	*2782	Blankbooks, Loose-leaf Binders and Devices (gravure printing of checkbooks)
				500	*3999	Manufacturing Industries, NEC (gravure printing of eyeglass frames for the trade)
323112	Commercial Flexographic Printing	N	500	500	*2759	Commercial Printing, NEC (flexographic printing)
				500	*2771	Greeting Cards (flexographic printing of greeting cards)
				500	*2782	Blankbooks, Loose-leaf Binders and Devices (flexographic printing of checkbooks)
				500	*3999	Manufacturing Industries, NEC (flexographic printing of eyeglass frames for the trade)
323113	Commercial Screen Printing	N	500	500	*2396	Automotive Trimmings, Apparel Findings, and Related Products (printing and embossing on fabric articles)
				500	*2759	Commercial Printing, NEC (screen printing)
				500	*2771	Greeting Cards (screen printing of greeting cards)
				500	*2782	Blankbooks, Loose-leaf Binders and Devices (screen printing of checkbooks)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
				500	*3999	Manufacturing Industries, NEC (screen printing of eyeglass frames for the trade)
323114	Quick Printing	N	500	500	*2752	Commercial Printing, Lithographic (quick printing)
				500	*2759	Commercial Printing, NEC (quick printing)
323115	Digital Printing	N	500	500	*2759	Commercial Printing, NEC (digital printing, except quick printing)
323116	Manifold Business Form Printing ..	E	500	500	2761	Manifold Business Forms
323117	Book Printing	E	500	500	2732	Book Printing
323118	Blankbook, Loose-leaf Binder and Device Manufacturing.	R	500	500	*2782	Blankbooks, Loose-leaf Binders and Devices (except check-books)
323119	Other Commercial Printing	R	500	500	*2759	Commercial Printing, NEC (other commercial printing except quick printing)
				500	*2771	Greeting Cards (other printing of greeting cards)
				500	*2782	Blankbooks, Loose-leaf Binders and Devices (other printing of checkbooks)
				500	*3999	Manufacturing Industries, NEC (other printing of eyeglass frames for the trade)
323121	Tradebinding and Related Work ...	E	500	500	2789	Bookbinding and Related Work
323122	Prepress Services	R	500	500	2791	Typesetting
				500	2796	Platemaking and Related Services
Subsector 324—Petroleum and Coal Products Manufacturing						
32411	Petroleum Refineries	E	[4] 1,500	[4] 1,500	2911	Petroleum Refining
324121	Asphalt Paving Mixture and Block Manufacturing.	E	500	500	2951	Asphalt Paving Mixtures and Blocks
324122	Asphalt Shingle and Coating Materials Manufacturing.	E	750	750	2952	Asphalt Felts and Coatings
324191	Petroleum Lubricating Oil and Grease Manufacturing.	E	500	500	2992	Lubricating Oils and Greases
324199	All Other Petroleum and Coal Products Manufacturing.	R	500	500	2999	Products of Petroleum and Coal, NEC
				1,000	*3312	Blast Furnaces and Steel Mills (coke ovens)
Subsector 325—Chemical Manufacturing						
32511	Petrochemical Manufacturing	N	1,000	750	*2865	Cyclic Organic Crudes and Intermediates, and Organic Dyes and Pigments (aromatics)
				1,000	*2869	Industrial Organic Chemicals, NEC (aliphatics)
32512	Industrial Gas Manufacturing	R	1,000	1,000	2813	Industrial Gases
				1,000	*2869	Industrial Organic Chemicals, NEC (fluorocarbon gases)
325131	Inorganic Dye and Pigment Manufacturing.	N	1,000	1,000	*2816	Inorganic Pigments (except bone and lamp black)
				1,000	*2819	Industrial Inorganic Chemicals, NEC (inorganic dyes)
325132	Synthetic Organic Dye and Pigment Manufacturing.	N	750	750	*2865	Cyclic Organic Crudes and Intermediates, and Organic Dyes and Pigments (organic dyes and pigments)
325181	Alkalies and Chlorine Manufacturing.	E	1,000	1,000	2812	Alkalies and Chlorine
325182	Carbon Black Manufacturing	R	500	1,000	*2816	Inorganic pigments (bone and lamp black)
				500	2895	Carbon Black

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
325188	All Other Basic Inorganic Chemical Manufacturing.	R	1,000	1,000	*2819	Industrial Inorganic Chemicals, NEC (except activated carbon and charcoal, alumina, and inorganic industrial dyes)
				1,000	*2869	Industrial Organic Chemicals, NEC (carbon bisulfide)
325191	Gum and Wood Chemical Manufacturing.	E	500	500	2861	Gum and Wood Chemicals
325192	Cyclic Crude and Intermediate Manufacturing.	R	750	750	*2865	Cyclic Organic Crudes and Intermediates and Organic Dyes and Pigments (except aromatics and organic dyes and pigments)
325193	Ethyl Alcohol Manufacturing	N	1,000	1,000	*2869	Industrial Organic Chemicals (ethyl alcohol)
325199	All Other Basic Organic Chemical Manufacturing.	R	1,000	1,000	*2869	Industrial Organic Chemicals, NEC (except aliphatics, carbon bisulfide, ethyl alcohol, and fluorocarbon gases)
				500	*2899	Chemical and Chemical Preparations, NEC (fatty acids)
325211	Plastics Material and Resin Manufacturing.	E	750	750	2821	Plastics Materials, Synthetic and Resins, and Nonvulcanizable Elastomers
325212	Synthetic Rubber Manufacturing ...	E	1,000	1,000	2822	Synthetic Rubber
325221	Cellulosic Organic Fiber Manufacturing.	E	1,000	1,000	2823	Cellulosic Manmade Fibers
325222	Noncellulosic Organic Fiber Manufacturing.	E	1,000	1,000	2824	Manmade Organic Fibers, Except Cellulosic
325311	Nitrogenous Fertilizer Manufacturing.	E	1,000	1,000	2873	Nitrogenous Fertilizers
325312	Phosphatic Fertilizer Manufacturing.	E	500	500	2874	Phosphatic Fertilizers
325314	Fertilizer (Mixing Only) Manufacturing.	E	500	500	2875	Fertilizers, Mixing Only
32532	Pesticide and Other Agricultural Chemical Manufacturing.	E	500	500	2879	Pesticides and Agricultural Chemicals, NEC
325411	Medicinal and Botanical Manufacturing.	E	750	750	2833	Medicinal Chemicals and Botanical Products
325412	Pharmaceutical Preparation Manufacturing.	R	750	750	2834	Pharmaceutical Preparations
				500	*2835	In-Vitro and In-Vivo Diagnostic Substances (except in-vitro diagnostic)
325413	In-Vitro Diagnostic Substance Manufacturing.	N	500	500	*2835	In-Vitro and In-Vivo Diagnostic Substances (in-vitro diagnostic substances)
325414	Biological Product (except Diagnostic) Manufacturing.	E	500	500	2836	Biological Products, Except Diagnostic Substance
32551	Paint and Coating Manufacturing ..	R	500	500	2851	Paints, Varnishes, Lacquers, Enamels and Allied Products
				500	*2899	Chemicals and Chemical Preparations, NEC (frit)
32552	Adhesive Manufacturing	E	500	500	2891	Adhesives and Sealants
325611	Soap and Other Detergent Manufacturing.	R	750	750	2841	Soaps and Other Detergents, Except Specialty Cleaners
				500	*2844	Toilet Preparations (toothpaste)
325612	Polish and Other Sanitation Good Manufacturing.	E	500	500	2842	Specialty Cleaning, Polishing, and Sanitary Preparations
325613	Surface Active Agent Manufacturing.	E	500	500	2843	Surface Active Agents, Finishing Agents, Sulfonated Oils, and Assistants
32562	Toilet Preparation Manufacturing ..	R	500	500	*2844	Perfumes, Cosmetics, and Other Toilet Preparations (except toothpaste)
32591	Printing Ink Manufacturing	E	500	500	2893	Printing Ink
32592	Explosives Manufacturing	E	750	750	2892	Explosives

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
325991	Custom Compounding of Purchased Resin.	E	500	500	3087	Custom Compounding of Purchased Plastics Resin
325992	Photographic Film, Paper, Plate and Chemical Manufacturing.	N	500	500	*3861	Photographic Equipment and Supplies (photographic films, paper, plates and chemicals)
325998	All Other Chemical Product and Preparation Manufacturing.	R	500	1,000	*2819	Industrial Inorganic Chemicals, NEC (activated carbon and charcoal)
				500	*2899	Chemicals and Chemical Preparations, NEC (except frit and table salt)
				500	*3952	Lead Pencils and Art Goods (drawing inks and india ink)
				500	*3999	Manufacturing Industries, NEC (matches)
Subsector 326—Plastics and Rubber Products Manufacturing						
326111	Unsupported Plastics Bag Manufacturing.	N	500	500	*2673	Plastics, Foil, and Coated Paper Bags (plastics bags)
326112	Unsupported Plastics Packaging Film and Sheet Manufacturing.	N	500	500	*2671	Packaging Paper and Plastics Film, Coated, and Laminated (plastics packaging film and sheet)
326113	Unsupported Plastics Film and Sheet (except Packaging) Manufacturing.	E	500	500	3081	Unsupported Plastics Film and Sheets
326121	Unsupported Plastics Profile Shape Manufacturing.	R	500	500	3082	Unsupported Plastics Profile Shapes
				500	*3089	Plastics Product, NEC (plastics sausage casings)
326122	Plastics Pipe and Pipe Fitting Manufacturing.	R	500	500	3084	Plastics Pipe
				500	*3089	Plastics Products, NEC (pipe fittings)
32613	Laminated Plastics Plate, Sheet and Shape Manufacturing.	E	500	500	3083	Laminated Plastics Plate, Sheet and Profile Shapes
32614	Polystyrene Foam Product Manufacturing.	N	500	500	*3086	Plastics Foam Products (polystyrene foam products)
32615	Urethane and Other Foam Product (except Polystyrene) Manufacturing.	N	500	500	*3086	Plastics Foam Products (urethane foam products)
32616	Plastics Bottle Manufacturing	E	500	500	3085	Plastics Bottles
326191	Plastics Plumbing Fixture Manufacturing.	E	500	500	3088	Plastics Plumbing Fixtures
326192	Resilient Floor Covering Manufacturing.	R	750	500	*3069	Fabricated Rubber Products, NEC (rubber resilient floor coverings)
				750	3996	Linoleum, Asphalted-Felt-Base, and Other Hard Surface Floor Coverings, NEC
326199	All Other Plastics Product Manufacturing.	R	500	500	*3089	Plastics Products, NEC (except plastics pipe fittings and plastics sausage casings)
				500	*3999	Manufacturing Industries, NEC (plastics products such as combs, hair curlers, etc.)
326211	Tire Manufacturing (except Retreading).	E	[5] 1,000	[5] 1,000	3011	Tires and Inner Tubes
326212	Tire Retreading	N	500	$10.5	*7534	Tire Retreading and Repair Shops (rebuilding)
32622	Rubber and Plastics Hoses and Belting Manufacturing.	E	500	500	3052	Rubber and Plastics Hose and Belting
326291	Rubber Product Manufacturing for Mechanical Use.	E	500	500	3061	Molded, Extruded, and Lathe-Cut Mechanical Rubber Goods

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
326299	All Other Rubber Product Manufacturing.	R	500	500	*3069	Fabricated Rubber Products, NEC (except rubberized fabric and rubber resilient floor covering)
Subsector 327—Nonmetallic Mineral Product Manufacturing						
327111	Vitreous China Plumbing Fixtures and China and Earthenware Bathroom Accessories Manufacturing.	E	750	750	3261	Vitreous China Plumbing Fixtures and China and Earthenware Fittings and Bathroom Accessories
327112	Vitreous China, Fine Earthenware and Other Pottery Product Manufacturing.	N	500	500	3262	Vitreous China Table and Kitchen Articles
				500	3263	Fine Earthenware (Whiteware) Table and Kitchen Articles
				500	3269	Pottery Products, NEC
327113	Porcelain Electrical Supply Manufacturing.	E	500	500	3264	Porcelain Electrical Supplies
327121	Brick and Structural Clay Tile Manufacturing.	E	500	500	3251	Brick and Structural Clay Tile
327122	Ceramic Wall and Floor Tile Manufacturing.	E	500	500	3253	Ceramic Wall and Floor Tile
327123	Other Structural Clay Product Manufacturing.	E	500	500	3259	Structural Clay Products, NEC
327124	Clay Refractory Manufacturing	E	500	500	3255	Clay Refractories
327125	Nonclay Refractory Manufacturing	E	750	750	3297	Nonclay Refractories
327211	Flat Glass Manufacturing	E	1,000	1,000	3211	Flat Glass
327212	Other Pressed and Blown Glass and Glassware Manufacturing.	E	750	750	3229	Pressed and Blown Glass and Glassware, NEC
327213	Glass Container Manufacturing	E	750	750	3221	Glass Containers
327215	Glass Product Manufacturing Made of Purchased Glass.	E	500	500	3231	Glass Products Made of Purchased Glass
32731	Cement Manufacturing	E	750	750	3241	Cement, Hydraulic
32732	Ready-Mix Concrete Manufacturing.	E	500	500	3273	Ready-Mixed Concrete
327331	Concrete Block and Brick Manufacturing.	E	500	500	3271	Concrete Block and Brick
327332	Concrete Pipe Manufacturing	N	500	500	*3272	Concrete Products, Except Block and Brick (concrete pipe)
32739	Other Concrete Product Manufacturing.	N	500	500	*3272	Concrete Products, Except Block and Brick (concrete products, except dry mix concrete and pipe)
32741	Lime Manufacturing	E	500	500	3274	Lime
32742	Gypsum Product Manufacturing	R	1,000	1,000	3275	Gypsum Products
				500	*3299	Nonmetallic Mineral Products, NEC (moldings, ornamental and architectural plaster work)
32791	Abrasive Product Manufacturing ...	R	500	500	*3291	Abrasive Products (except steel wool with or without soap)
327991	Cut Stone and Stone Product Manufacturing.	E	500	500	3281	Cut Stone and Stone Products
327992	Ground or Treated Mineral and Earth Manufacturing.	E	500	500	3295	Minerals and Earths, Ground or Otherwise Treated
327993	Mineral Wool Manufacturing	E	750	750	3296	Mineral Wool
327999	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing.	R	500	500	*3272	Concrete Products, Except Block and Brick (dry mixture concrete)
				750	*3292	Asbestos Products (except brake pads and linings)
				500	*3299	Nonmetallic Mineral Products, NEC (except moldings, ornamental and architectural plaster work)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
Subsector 331—Primary Metal Manufacturing						
331111	Iron and Steel Mills	N	1,000	1,000	*3312	Steel Works, Blast Furnaces (Including Coke Ovens), and Rolling Mills (except coke ovens not integrated with steel mills)
				750	*3399	Primary Metal Products, NEC (ferrous powder, paste, flakes, etc.)
331112	Electrometallurgical Ferroalloy Product Manufacturing.	R	750	750	*3313	Electrometallurgical Products, Except Steel (ferroalloys)
33121	Iron and Steel Pipe and Tube Manufacturing from Purchased Steel.	E	1,000	1,000	3317	Steel Pipe and Tubes
331221	Cold-Rolled Steel Shape Manufacturing.	E	1,000	1,000	3316	Cold-Rolled Steel Sheet, Strip and Bars
331222	Steel Wire Drawing	R	1,000	1,000	*3315	Steel Wiredrawing and Steel Nails and Spikes (steel wire drawing)
331311	Alumina Refining	N	1,000	1,000	*2819	Industrial Inorganic Chemicals, NEC (alumina)
331312	Primary Aluminum Production	E	1,000	1,000	3334	Primary Production of Aluminum
331314	Secondary Smelting and Alloying of Aluminum.	N	750	500	*3341	Secondary Smelting and Refining of Nonferrous Metals (aluminum)
				750	*3399	Primary Metal Products, NEC (aluminum powder, paste, flakes, etc.)
331315	Aluminum Sheet, Plate and Foil Manufacturing.	E	750	750	3353	Aluminum Sheet, Plate, and Foil
331316	Aluminum Extruded Product Manufacturing.	E	750	750	3354	Aluminum Extruded Products
331319	Other Aluminum Rolling and Drawing.	R	750	750	3355	Aluminum Rolling and Drawing, NEC
				1,000	*3357	Drawing and Insulating of Nonferrous Wire (aluminum wire drawing)
331411	Primary Smelting and Refining of Copper.	E	1,000	1,000	3331	Primary Smelting and Refining of Copper
331419	Primary Smelting and Refining of Nonferrous Metal (except Copper and Aluminum).	E	750	750	3339	Primary Smelting and Refining of Nonferrous Metals, Except Copper and Aluminum
331421	Copper Rolling, Drawing and Extruding.	E	750	750	3351	Rolling, Drawing, and Extruding of Copper
331422	Copper Wire (except Mechanical) Drawing.	N	1,000	1,000	*3357	Drawing and Insulating of Nonferrous Wire (copper wire drawing)
331423	Secondary Smelting, Refining, and Alloying of Copper.	R	750	500	*3341	Secondary Smelting and Refining of Nonferrous Metals (copper)
				750	*3399	Primary Metal Products, NEC (copper powders, flakes, paste, etc.)
331491	Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing and Extruding.	R	750	750	3356	Rolling, Drawing and Extruding of Nonferrous Metals, Except Copper and Aluminum
				1,000	*3357	Drawing and Insulating of Nonferrous Wire (wire drawing except copper or aluminum)
331492	Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum).	N	750	750	*3313	Electrometallurgical Products, Except Steel (except copper and aluminum)
				500	*3341	Secondary Smelting and Reining of Nonferrous Metals (except copper and aluminum)
				750	*3399	Primary Metal Products, NEC (except copper and aluminum)
331511	Iron Foundries	R	500	500	3321	Gray and Ductile Iron Foundries
				500	3322	Malleable Iron Foundries

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
331512	Steel Investment Foundries	E	500	500	3324	Steel Investment Foundries
331513	Steel Foundries, (except Investment).	E	500	500	3325	Steel Foundries, NEC
331521	Aluminum Die-Casting Foundries ..	E	500	500	3363	Aluminum Die-Castings
331522	Nonferrous (except Aluminum) Die-Casting Foundries.	E	500	500	3364	Nonferrous Die-Castings, Except Aluminum
331524	Aluminum Foundries (except Die-Casting).	E	500	500	3365	Aluminum Foundries
331525	Copper Foundries (except Die-Casting).	E	500	500	3366	Copper Foundries
331528	Other Nonferrous Foundries (except Die-Casting).	E	500	500	3369	Nonferrous Foundries, Except Aluminum and Copper
Subsector 332—Fabricated Metal Product Manufacturing						
332111	Iron and Steel Forging	E	500	500	3462	Iron and Steel Forgings
332112	Nonferrous Forging	E	500	500	3463	Nonferrous Forgings
332114	Custom Roll Forming	N	500	500	*3449	Miscellaneous Structural Metal Work (custom roll forming)
332115	Crown and Closure Manufacturing	E	500	500	3466	Crowns and Closures
332116	Metal Stamping	N	500	500	*3469	Metal Stampings, NEC (except kitchen utensils, pots and pans for cooking and coins)
332117	Powder Metallurgy Part Manufacturing.	N	500	500	*3499	Fabricated Metal Products, NEC (powder metallurgy)
332211	Cutlery and Flatware (except Precious) Manufacturing.	N	500	500	3421	Cutlery
				500	*3914	Silverware, Plated Ware, and Stainless Steel Ware (cutlery and flatware except precious)
	Hand and Edge Tool Manufacturing.	R	500	500	3423	Hand and Edge Tools, Except Machine Tools and Handsaws
				500	*3523	Farm Machinery and Equipment (hand hair clippers for animals)
				500	*3524	Lawn and Garden Tractors and Home Lawn and Garden Equipment (nonpowered lawnmowers)
				500	*3545	Cutting Tools, Machine Tools Accessories, and Machinist Precision Measuring Devices (precision measuring devices)
				500	*3799	Transportation Equipment, NEC (wheelbarrows)
				500	*3999	Manufacturing Industries, NEC (tape measures)
332213	Saw Blade and Handsaw Manufacturing.	E	500	500	3425	Saw Blades and Handsaws
332214	Kitchen Utensil, Pot and Pan Manufacturing.	N	500	500	*3469	Metal Stampings, NEC (kitchen utensils, pots, and pans for cooking)
3323	Architectural and Structural Metals Manufacturing					
33231	Plate Work and Fabricated Structural Product Manufacturing					
332311	Prefabricated Metal Building and Component Manufacturing.	E	500	500	3448	Prefabricated Metal Buildings and Components
332312	Fabricated Structural Metal Manufacturing.	R	500	500	3441	Fabricated Structural Metal
				500	*3449	Miscellaneous Structural Metal Work (fabricated bar joists and concrete reinforcing bars)
332313	Plate Work Manufacturing	N	500	500	*3443	Fabricated Plate Work (Boiler Shops) (fabricated plate work and metal weldments)
332321	Metal Window and Door Manufacturing.	R	500	500	3442	Metal Doors, Sash, Frames, Molding and Trim

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
				500	*3449	Miscellaneous Structural Metal Work (curtain wall)
332322	Sheet Metal Work Manufacturing ..	R	500	500	*3444	Sheet Metal Work (ducts, flumes, flooring, siding, dampers, etc.)
332323	Ornamental and Architectural Metal Work Manufacturing.	R	500	500	3446	Architectural and Ornamental Metal Work
				500	*3449	Miscellaneous Structural Metal Work (metal plaster bases)
				500	*3523	Farm Machinery and Equipment (corrals, stalls, and holding gates)
33241	Power Boiler and Heat Exchanger Manufacturing.	N	500	500	*3443	Fabricated Plate Work (Boiler Shops) (power boilers and heat exchangers)
33242	Metal Tank (Heavy Gauge) Manufacturing.	N	500	500	*3443	Fabricated Plate Work (Boiler Shops) (heavy gauge tanks)
33243	Metal Can, Box, and Other Metal Container (Light Gauge) Manufacturing					
332431	Metal Can Manufacturing	E	1,000	1,000	3411	Metal Cans
332439	Other Metal Container Manufacturing.	R	500	500	3412	Metal Shipping Barrels, Drums, Kegs, and Pails
				500	*3429	Hardware, NEC (vacuum and insulated bottles, jugs, and chests)
				500	*3444	Sheet Metal Work (metal bins and vats)
				500	*3499	Fabricated Metal Products, NEC (metal boxes)
				750	*3537	Industrial Trucks, Tractors, Trailers, and Stackers (metal air cargo containers)
33251	Hardware Manufacturing	R	500	500	*3429	Hardware, NEC (hardware, except hose nozzles, and vacuum and insulated bottles, jugs and chests)
				500	*3499	Fabricated Metal Products, NEC (safe and vault locks)
332611	Spring (Heavy Gauge) Manufacturing.	E	500	500	3493	Steel Springs, Except Wire
332612	Spring (Light Gauge) Manufacturing.	R	500	500	*3495	Wire Springs (except watch and clock springs)
332618	Other Fabricated Wire Product Manufacturing.	R	500	1,000	*3315	Steel Wiredrawing and Steel Nails and Spikes (nails, spikes, paper clips and wire not made in wiredrawing plants)
				750	*3399	Primary Metal Products, NEC (nonferrous nails, brads, staples, etc.)
				500	3496	Miscellaneous Fabricated Wire Products
33271	Machine Shops	N	500	500	*3599	Industrial and Commercial Machinery and Equipment, NEC (machine shops)
332721	Precision Turned Product Manufacturing.	E	500	500	3451	Screw Machine Products
332722	Bolt, Nut, Screw, Rivet and Washer Manufacturing.	E	500	500	3452	Bolts, Nuts, Screws, Rivets, and Washers
332811	Metal Heat Treating	E	750	750	3398	Metal Heat Treating
332812	Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers.	R	500	500	*3479	Coating, Engraving, and Allied Services, NEC (except jewelry, silverware, and flatware engraving and etching)
332813	Electroplating, Plating, Polishing, Anodizing and Coloring.	R	500	750	*3399	Primary Metal Products, NEC (laminating steel)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
				500	3471	Electroplating, Plating, Polishing, Anodizing, and Coloring
332911	Industrial Valve Manufacturing	E	500	500	3491	Industrial Valves
332912	Fluid Power Valve and Hose Fitting Manufacturing.	R	500	500	3492	Fluid Power Valves and Hose Fittings
				[9] 1,000	*3728	Aircraft Parts and Auxiliary Equipment, NEC (fluid power aircraft subassemblies)
332913	Plumbing Fixture Fitting and Trim Manufacturing.	R	500	500	*3432	Plumbing Fixture Fittings and Trim (except shower rods)
332919	Other Metal Valve and Pipe Fitting Manufacturing.	R	500	500	*3429	Hardware, NEC (hose nozzles)
				500	*3494	Valves and Pipe Fittings, NEC (except metal pipe hangers and supports)
				500	*3499	Fabricated Metal Products, NEC (metal aerosol valves)
332991	Ball and Roller Bearing Manufacturing.	E	750	750	3562	Ball and Roller Bearings
332992	Small Arms Ammunition Manufacturing.	E	1,000	1,000	3482	Small Arms Ammunition
332993	Ammunition (except Small Arms) Manufacturing.	E	1,500	1,500	3483	Ammunition, Except for Small Arms
332994	Small Arms Manufacturing	E	1,000	1,000	3484	Small Arms
332995	Other Ordnance and Accessories Manufacturing.	E	500	500	3489	Ordnance and Accessories, NEC
332996	Fabricated Pipe and Pipe Fitting Manufacturing.	E	500	500	3498	Fabricated Pipe and Pipe Fittings
332997	Industrial Pattern Manufacturing ...	E	500	500	3543	Industrial Patterns
332998	Enameled Iron and Metal Sanitary Ware Manufacturing.	E	750	750	3431	Enameled Iron and Metal Sanitary Ware
332999	All Other Miscellaneous Fabricated Metal Product Manufacturing.	R	500	500	*3291	Abrasive Products (steel wool with or without soap)
				500	*3432	Plumbing Fixture Fittings and Trim (metal shower rods)
				500	*3494	Valves and Pipe Fittings, NEC (metal pipe hangers and supports)
				500	*3497	Metal Foil and Leaf (foil and foil containers)
				500	*3499	Fabricated Metal Products, NEC (other metal products)
				750	*3537	Industrial Trucks, Tractors, Trailers, and Stackers (metal pallets)
				500	*3599	Industrial and Commercial Machinery and Equipment, NEC (flexible metal hose)
				500	*3999	Manufacturing Industries, NEC (other miscellaneous metal products, such as combs, hair curlers, etc.)
Subsector 333—Machinery Manufacturing						
333111	Farm Machinery and Equipment Manufacturing.	R	500	500	*3523	Farm Machinery and Equipment (except corrals, stalls, holding gates, hand clippers for animals, and farm conveyors/elevators)
333112	Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing.	R	500	500	*3524	Lawn and Garden Tractors and Home Lawn and Garden Equipment (except nonpowered lawnmowers)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	**N**ew, **E**xisting or **R**evised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
33312	Construction Machinery Manufacturing.	R	750	750	*3531	Construction Machinery and Equipment (except railway track maintenance equipment; winches, aerial work platforms; and automotive wreckers hoists)
333131	Mining Machinery and Equipment Manufacturing.	E	500	500	3532	Mining Machinery and Equipment, Except Oil and Gas Field Machinery and Equipment
333132	Oil and Gas Field Machinery and Equipment Manufacturing.	E	500	500	3533	Oil and Gas Field Machinery and Equipment
33321	Sawmill and Woodworking Machinery Manufacturing.	E	500	500	3553	Woodworking Machinery
33322	Plastics and Rubber Industry Machinery Manufacturing.	N	500	500	*3559	Special Industry Machinery, NEC (rubber and plastics manufacturing machinery)
333291	Paper Industry Machinery Manufacturing.	E	500	500	3554	Paper Industries Machinery
333292	Textile Machinery Manufacturing ..	E	500	500	3552	Textile Machinery
333293	Printing Machinery and Equipment Manufacturing.	E	500	500	3555	Printing Trades Machinery and Equipment
333294	Food Product Machinery Manufacturing.	E	500	500	3556	Food Products Machinery
333295	Semiconductor Machinery Manufacturing.	N	500	500	*3559	Special Industry Machinery, NEC (semiconductor machinery manufacturing)
333298	All Other Industrial Machinery Manufacturing.	R	500	500	*3559	Special Industry Machinery, NEC (except rubber and plastics manufacturing machinery, semiconductor manufacturing machinery, and automotive maintenance equipment)
				500	*3639	Household Appliances, NEC (household sewing machines)
333311	Automatic Vending Machine Manufacturing.	E	500	500	3581	Automatic Vending Machines
333312	Commercial Laundry, Drycleaning and Pressing Machine Manufacturing.	E	500	500	3582	Commercial Laundry, Drycleaning and Pressing Machines
333313	Office Machinery Manufacturing	N	1,000	1,000	*3578	Calculating and Accounting Machinery, Except Electronic Computers (except point of sales terminals and funds transfer devices)
				500	*3579	Office Machines, NEC (except timeclocks, time stamps, pencil sharpeners, stapling machines, etc.)
333314	Optical Instrument and Lens Manufacturing.	E	500	500	3827	Optical Instruments and Lenses
333315	Photographic and Photocopying Equipment Manufacturing.	N	500	500	*3861	Photographic Equipment and Supplies (except photographic film, paper, plates and chemicals)
333319	Other Commercial and Service Industry Machinery Manufacturing.	R	500	500	*3559	Special Industry Machinery, NEC (automotive maintenance equipment)
				500	3589	Service Industry Machinery, NEC
				500	*3599	Industrial and Commercial Machinery and Equipment, NEC (carnival amusement park equipment)
				750	*3699	Electrical Machinery, Equipment and Supplies, NEC (electronic teaching machines and flight simulators)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
333411	Air Purification Equipment Manufacturing.	N	500	500	*3564	Industrial and Commercial Fans and Blowers and Air Purification Equipment (air purification equipment)
333412	Industrial and Commercial Fan and Blower Manufacturing.	R	500	500	*3564	Industrial and Commercial Fans and Blowers and Air Purification Equipment (fans and blowers)
333414	Heating Equipment (except Warm Air Furnaces) Manufacturing.	R	500	500	3433	Heating Equipment, Except Electric and Warm Air Furnaces
				750	*3634	Electric Housewares and Fans (wall and baseboard heating units for permanent installation)
333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.	R	750	500	*3443	Fabricated Plate Work (Boiler Shops) (metal cooling towers)
				750	*3585	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment (except motor vehicle air-conditioning)
333511	Industrial Mold Manufacturing	R	500	500	*3544	Special Dies and Tools, Die Sets, Jigs and Fixtures, and Industrial Molds (industrial molds)
333512	Machine Tool (Metal Cutting Types) Manufacturing.	E	500	500	3541	Machine Tools, Metal Cutting Type
333513	Machine Tool (Metal Forming Types) Manufacturing.	E	500	500	3542	Machine Tools, Metal Forming Type
333514	Special Die and Tool, Die Set, Jig and Fixture Manufacturing.	R	500	500	*3544	Special Dies and Tools, Die Sets, Jigs and Fixtures, and Industrial Molds (except molds)
333515	Cutting Tool and Machine Tool Accessory Manufacturing.	R	500	500	*3545	Cutting Tools, Machine Tool Accessories, and Machinists' Precision Measuring Devices (except precision measuring devices)
333516	Rolling Mill Machinery and Equipment Manufacturing.	E	500	500	3547	Rolling Mill Machinery and Equipment
333518	Other Metalworking Machinery Manufacturing.	E	500	500	3549	Metalworking Machinery, NEC
333611	Turbine and Turbine Generator Set Unit Manufacturing.	E	1,000	1,000	3511	Steam, Gas, and Hydraulic Turbines, and Turbine Generator Set Units
333612	Speed Changer, Industrial High-Speed Drive and Gear Manufacturing.	E	500	500	3566	Speed Changers, Industrial High-Speed Drives, and Gears
333613	Mechanical Power Transmission Equipment Manufacturing.	E	500	500	3568	Mechanical Power Transmission Equipment, NEC
333618	Other Engine Equipment Manufacturing.	R	1,000	1,000	*3519	Internal Combustion Engines, NEC (except stationary engine radiators)
				750	*3699	Electrical Machinery, Equipment and Supplies, NEC (outboard electric motors)
333911	Pump and Pumping Equipment Manufacturing.	R	500	500	3561	Pumps and Pumping Equipment
				1,000	*3743	Railroad Equipment (locomotive fuel lubricating or cooling medium pumps)
333912	Air and Gas Compressor Manufacturing.	E	500	500	3563	Air and Gas Compressors
333913	Measuring and Dispensing Pump Manufacturing.	E	500	500	3586	Measuring and Dispensing Pumps
333921	Elevator and Moving Stairway Manufacturing.	E	500	500	3534	Elevators and Moving Stairways

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
333922	Conveyor and Conveying Equipment Manufacturing.	R	500	500	*3523	Farm Machinery and Equipment (farm conveyors and elevators)
				500	3535	Conveyors and Conveying Equipment
333923	Overhead Traveling Crane, Hoist and Monorail System Manufacturing.	R	500	500	3536	Overhead Traveling Cranes, Hoists, and Monorail Systems
				750	*3531	Construction Machinery and Equipment (winches, aerial work platforms, and automobile wrecker hoists)
333924	Industrial Truck, Tractor, Trailer and Stacker Machinery Manufacturing.	R	750	750	*3537	Industrial Trucks, Tractors, Trailers, and Stackers (except metal pallets and metal air cargo containers)
333991	Power-Driven Hand Tool Manufacturing.	E	500	500	3546	Power-Driven Handtools
333992	Welding and Soldering Equipment Manufacturing.	R	500	500	*3548	Electric and Gas Welding and Soldering Equipment (except transformers for arc-welding)
333993	Packaging Machinery Manufacturing.	E	500	500	3565	Packaging Machinery
333994	Industrial Process Furnace and Oven Manufacturing.	E	500	500	3567	Industrial Process Furnaces and Ovens
333995	Fluid Power Cylinder and Actuator Manufacturing.	E	500	500	3593	Fluid Power Cylinders and Actuators
333996	Fluid Power Pump and Motor Manufacturing.	E	500	500	3594	Fluid Power Pumps and Motors
333997	Scale and Balance (except Laboratory) Manufacturing.	E	500	500	3596	Scales and Balances, Except Laboratory
333999	All Other Miscellaneous General Purpose Machinery Manufacturing.	R	500	500	*3599	Industrial and Commercial Machinery and Equipment, NEC (other industrial and commercial machinery and equipment)
				500	3569	General Industrial Machinery and Equipment, NEC
Subsector 334—Computer and Electronic Product Manufacturing						
334111	Electronic Computer Manufacturing.	E	1,000	1,000	3571	Electronic Computers
334112	Computer Storage Device Manufacturing.	E	1,000	1,000	3572	Computer Storage Devices
334113	Computer Terminal Manufacturing	E	1,000	1,000	3575	Computer Terminals
334119	Other Computer Peripheral Equipment Manufacturing.	R	1,000	1,000	3577	Computer Peripheral Equipment, NEC
				1,000	*3578	Calculating and Accounting Machines, Except Electronic Computers (point of sale terminals and fund transfer devices)
				750	*3699	Electrical Machinery, Equipment and Supplies, NEC (bar code scanners)
33421	Telephone Apparatus Manufacturing.	R	1,000	1,000	*3661	Telephone and Telegraph Apparatus (except telephone transformers and consumer external modems)
33422	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.	R	750	750	3663	Radio and Television Broadcasting and Communication Equipment
				500	*3679	Electronic Components, NEC (communication equipment)
33429	Other Communications Equipment Manufacturing.	E	750	750	3669	Communications Equipment, NEC
33431	Audio and Video Equipment Manufacturing.	E	750	750	3651	Household Audio and Video Equipment

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
334411	Electron Tube Manufacturing	E	750	750	3671	Electron Tubes
334412	Bare Printed Circuit Board Manufacturing.	E	500	500	3672	Printed Circuit Boards
334413	Semiconductor and Related Device Manufacturing.	E	500	500	3674	Semiconductors and Related Devices
334414	Electronic Capacitor Manufacturing	E	500	500	3675	Electronic Capacitors
334415	Electronic Resistor Manufacturing	E	500	500	3676	Electronic Resistors
334416	Electronic Coil, Transformer, and Other Inductor Manufacturing.	R	500	1,000	*3661	Telephone and Telegraph Apparatus (telephone transformers)
				500	3677	Electronic Coils, Transformers, and Other Inductors
				500	*3825	Instruments for Measuring and Testing of Electricity and Electrical Signals (portable instrument transformers)
334417	Electronic Connector Manufacturing.	E	500	500	3678	Electronic Connectors
334418	Printed Circuit Assembly (Electronic Assembly) Manufacturing.	N	500	500	*3679	Electronic Components, NEC (printed circuit/electronic assembly manufacturing)
				1,000	*3661	Telephone and Telegraph Apparatus (consumer external modems)
334419	Other Electronic Component Manufacturing.	R	500	500	*3679	Electronic Components, NEC (other electronic components)
334510	Electromedical and Electrotherapeutic Apparatus Manufacturing.	R	500	500	*3842	Orthopedic, Prosthetic and Surgical Appliances and Supplies (electronic hearing aids)
				500	*3845	Electromedical and Electrotherapeutic Apparatus (other electromedical and electrotherapeutic apparatus)
334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing.	E	750	750	3812	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instruments
334512	Automatic Environmental Control Manufacturing for Residential, Commercial and Appliance Use.	E	500	500	3822	Automatic Controls for Regulating Residential and Commercial Environments and Appliances
334513	Instruments and Related Products Manufacturing for Measuring, Displaying, and Controlling Industrial Process Variables.	E	500	500	3823	Industrial Instruments for Measurement, Display, and Control of Process Variables; and Related Products
334514	Totalizing Fluid Meter and Counting Device Manufacturing.	E	500	500	3824	Totalizing Fluid Meters and Counting Devices
334515	Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals.	R	500	500	*3825	Instruments for Measuring and Testing of Electricity and Electrical Signals (except portable instrument transformers)
334516	Analytical Laboratory Instrument Manufacturing.	E	500	500	3826	Laboratory Analytical Instruments
334517	Irradiation Apparatus Manufacturing.	R	500	500	3844	X-Ray Apparatus and Tubes and Related Irradiation Apparatus
				500	*3845	Electromedical and Electrotherapeutic Apparatus (CT and CAT Scanners)
334518	Watch, Clock, and Part Manufacturing.	R	500	500	*3495	Wire Springs (clock and watch springs)
				500	*3579	Office Machines, NEC (time clocks and other time recording devices)
				500	3873	Watches, Clocks, Clockwork Operated Devices, and Parts
334519	Other Measuring and Controlling Device Manufacturing.	R	500	500	*3829	Measuring and Controlling Devices, NEC (except medical thermometers)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
334611	Software Reproducing	N	500	$18.0	*7372	Prepackaged Software (reproduction of software)
334612	Prerecorded Compact Disc (except Software), Tape, and Record Reproducing.	N	750	750	*3652	Phonograph Records and Prerecorded Audio Tapes and Disks (reproduction of all other media except video)
				$21.5	*7819	Services Allied to Motion Picture Production (reproduction of video)
334613	Magnetic and Optical Recording Media Manufacturing.	E	1,000	1,000	3695	Magnetic and Optical Recording Media
Subsector 335—Electrical Equipment, Appliance and Component Manufacturing						
33511	Electric Lamp Bulb and Part Manufacturing.	E	1,000	1,000	3641	Electric Lamp Bulbs and Tubes
335121	Residential Electric Lighting Fixture Manufacturing.	E	500	500	3645	Residential Electric Lighting Fixtures
				500	*3999	Manufacturing Industries, NEC (lamp shades of paper or textile)
335122	Commercial, Industrial and Institutional Electric Lighting Fixture Manufacturing.	E	500	500	3646	Commercial, Industrial, and Institutional Electric Lighting Fixtures
335129	Other Lighting Equipment Manufacturing.	R	500	500	3648	Lighting Equipment, NEC
				750	*3699	Electrical Machinery, Equipment, and Supplies, NEC (Christmas tree lighting sets and electric insect lamps)
335211	Electric Housewares and Household Fan Manufacturing.	R	750	750	*3634	Electric Housewares and Fans (except wall and baseboard heating units for permanent installation)
335212	Household Vacuum Cleaner Manufacturing.	R	750	750	3635	Household Vacuum Cleaners
				500	*3639	Household Appliances, NEC (floor waxing and floor polishing machines)
335221	Household Cooking Appliance Manufacturing.	E	750	750	3631	Household Cooking Equipment
335222	Household Refrigerator and Home Freezer Manufacturing.	E	1,000	1,000	3632	Household Refrigerators and Home and Farm Freezers
335224	Household Laundry Equipment Manufacturing.	E	1,000	1,000	3633	Household Laundry Equipment
335228	Other Major Household Appliance Manufacturing.	R	500	500	*3639	Household Appliances, NEC (except floor waxing and floor polishing machines, and household sewing machines)
335311	Power, Distribution and Specialty Transformer Manufacturing.	R	750	500	*3548	Electric and Gas Welding and Soldering Equipment (transformers for arc-welders)
				750	3612	Power, Distribution, and Specialty Transformers
335312	Motor and Generator Manufacturing.	R	1,000	1,000	3621	Motors and Generators
				$5.0	*7694	Armature Rewinding Shops (remanufacturing)
335313	Switchgear and Switchboard Apparatus Manufacturing.	E	750	750	3613	Switchgear and Switchboard Apparatus
335314	Relay and Industrial Control Manufacturing.	E	750	750	3625	Relays and Industrial Controls
335911	Storage Battery Manufacturing	E	500	500	3691	Storage Batteries
335912	Primary Battery Manufacturing	E	1,000	1,000	3692	Primary Batteries, Dry and Wet
335921	Fiber Optic Cable Manufacturing ..	N	1,000	1,000	*3357	Drawing and Insulating of Nonferrous Wire (fiber optic cable-insulating only)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
335929	Other Communication and Energy Wire Manufacturing.	N	1,000	1,000	*3357	Drawing and Insulating of Nonferrous Wire (communication and energy wire, except fiber optic-insulating only)
33593	Wiring Device Manufacturing					
335931	Current-Carrying Wiring Device Manufacturing.	E	500	500	3643	Current-Carrying Wiring Devices
335932	Noncurrent-Carrying Wiring Device Manufacturing.	E	500	500	3644	Noncurrent-Carrying Wiring Devices
335991	Carbon and Graphite Product Manufacturing.	E	750	750	3624	Carbon and Graphite Products
335999	All Other Miscellaneous Electrical Equipment and Component Manufacturing.	R	500	500	3629	Electrical Industrial Apparatus, NEC
				750	*3699	Electrical Machinery, Equipment, and Supplies, NEC (other electrical industrial apparatus)
Subsector 336—Transportation Equipment Manufacturing						
336111	Automobile Manufacturing	N	1,000	1,000	*3711	Motor Vehicles and Passenger Car Bodies (automobiles)
336112	Light Truck and Utility Vehicle Manufacturing.	N	1,000	1,000	*3711	Motor Vehicles and Passenger Car Bodies (light trucks and utility vehicles)
33612	Heavy Duty Truck Manufacturing ..	N	1,000	1,000	*3711	Motor Vehicles and Passenger Car Bodies (heavy duty trucks)
336211	Motor Vehicle Body Manufacturing	R	1,000	1,000	*3711	Motor Vehicles and Passenger Car Bodies (kit car and other passenger car bodies)
				500	3713	Truck and Bus Bodies
				750	*3714	Motor Vehicle Parts and Accessories (dumptruck lifting mechanisms and fifth wheels)
336212	Truck Trailer Manufacturing	E	500	500	3715	Truck Trailers
336213	Motor Home Manufacturing	E	1,000	1,000	3716	Motor Homes
336214	Travel Trailer and Camper Manufacturing.	R	500	500	3792	Travel Trailers and Campers
				500	*3799	Transportation Equipment, NEC (automobile, boat, utility and light truck trailers)
336311	Carburetor, Piston, Piston Ring and Valve Manufacturing.	E	500	500	3592	Carburetors, Pistons, Piston Rings, and Valves
336312	Gasoline Engine and Engine Parts Manufacturing.	N	750	750	*3714	Motor Vehicle Parts and Accessories (gasoline engines and engine parts including rebuilt)
336321	Vehicular Lighting Equipment Manufacturing.	E	500	500	3647	Vehicular Lighting Equipment
336322	Other Motor Vehicle Electrical and Electronic Equipment Manufacturing.	R	750	500	*3679	Electronic Components, NEC (electronic control modules for motor vehicles)
				750	3694	Electrical Equipment for Internal Combustion Engines
				750	*3714	Motor Vehicle Parts and Accessories (wiring harness sets, other than ignition; block heaters and battery heaters; instrument board assemblies; permanent defrosters; windshield washer-wiper mechanisms; cruise control mechanisms; and other electrical equip
33633	Motor Vehicle Steering and Suspension Components (except Spring) Manufacturing.	N	750	750	*3714	Motor Vehicle Parts and Accessories (steering and suspension parts)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
33634	Motor Vehicle Brake System Manufacturing.	N	750	750	*3292	Asbestos Products (asbestos brake linings and pads)
				750	*3714	Motor Vehicle Parts and Accessories (brake and brake systems, including assemblies)
33635	Motor Vehicle Transmission and Power Train Parts Manufacturing.	N	750	750	*3714	Motor Vehicle Parts and Accessories (transmissions and power train parts, including rebuilding)
33636	Motor Vehicle Seating and Interior Trim Manufacturing.	N	500	500	*2396	Automotive Trimmings, Apparel Findings, and Related Products (textile motor vehicle trimming)
				500	*2399	Fabricated Textile Products, NEC (seat belts, and seat and tire covers)
				500	*2531	Public Building and Related Furniture (seats for motor vehicles)
33637	Motor Vehicle Metal Stamping	E	500	500	3465	Automotive Stampings
336391	Motor Vehicle Air-Conditioning Manufacturing.	N	750	750	*3585	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment (motor vehicle air-conditioning)
336399	All Other Motor Vehicle Parts Manufacturing.	R	750	1,000	*3519	Internal Combustion Engines, NEC (stationary engine radiators)
				500	*3599	Industrial and Commercial Machinery and Equipment, NEC (gasoline, oil and intake filters for internal combustion engines, except for motor vehicles)
				750	*3714	Motor Vehicle Parts and Accessories (except truck and bus bodies, trailers, engine and engine parts, motor vehicle electrical and electronic equipment, motor vehicle steering and suspension components, motor vehicle brake systems, and motor vehicle transmission and power train parts)
336411	Aircraft Manufacturing	E	1,500	1,500	3721	Aircraft
336412	Aircraft Engine and Engine Parts Manufacturing.	E	1,000	1,000	3724	Aircraft Engines and Engine Parts
336413	Other Aircraft Part and Auxiliary Equipment Manufacturing.	R	[7] 1,000	[9] 1,000	*3728	Aircraft Parts and Auxiliary Equipment, NEC (except fluid power aircraft subassemblies)
336414	Guided Missile and Space Vehicle Manufacturing.	E	1,000	1,000	3761	Guided Missiles and Space Vehicles
336415	Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Parts Manufacturing.	E	1,000	1,000	3764	Guided Missile and Space Vehicle Propulsion Units and Propulsion Unit Parts
336419	Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing.	E	1,000	1,000	3769	Guided Missile and Space Vehicle Parts and Auxiliary Equipment
33651	Railroad Rolling Stock Manufacturing.	R	1,000	750	*3531	Construction Machinery and Equipment (railway track maintenance equipment)
				1,000	*3743	Railroad Equipment (except locomotive fuel lubricating or cooling medium pumps)
336611	Ship Building and Repairing	E	1,000	1,000	3731	Ship Building and Repairing
336612	Boat Building	R	500	500	*3732	Boat Building and Repairing (boat building)
336991	Motorcycle, Bicycle and Parts Manufacturing.	R	500	500	*3944	Games, Toys, and Children's Vehicles, Except Dolls and Bicycles (metal tricycles)
				500	3751	Motorcycles, Bicycles and Parts

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
336992	Military Armored Vehicle, Tank and Tank Component Manufacturing.	R	1,000	1,000	*3711	Motor Vehicles and Passenger Car Bodies (military armored vehicles)
				1,000	3795	Tanks and Tank Components
336999	All Other Transportation Equipment Manufacturing.	R	500	500	*3799	Transportation Equipment, NEC (except automobile, boat, utility light truck trailers, and wheelbarrows)
Subsector 337 — Furniture and Related Product Manufacturing						
33711	Wood Kitchen Cabinet and Counter Top Manufacturing.	R	500	500	2434	Wood Kitchen Cabinets
				500	*2541	Wood Office and Store Fixtures, Partitions, Shelving, and Lockers (counter tops)
				$5.0	*5712	Furniture Stores (custom wood cabinets)
337121	Upholstered Household Furniture Manufacturing.	R	500	500	2512	Wood Household Furniture, Upholstered
				500	*2515	Mattress, Foundations, and Convertible Beds (convertible sofas)
				$5.0	*5712	Furniture (custom made upholstered household furniture except cabinets)
337122	Nonupholstered Wood Household Furniture Manufacturing.	E	500	500	2511	Wood Household Furniture, Except Upholstered
				$5.0	*5712	Furniture Stores (custom made wood household furniture except cabinets)
337124	Metal Household Furniture Manufacturing.	E	500	500	2514	Metal Household Furniture
337125	Household Furniture (except Wood and Metal) Manufacturing.	E	500	500	2519	Household Furniture, NEC
337127	Institutional Furniture Manufacturing.	R	500	500	*2531	Public Building and Related Furniture (furniture made for public buildings)
				500	*2599	Furniture and Fixtures, NEC (except hospital beds)
				500	*3952	Lead Pencils, Crayons, and Artist's Materials (drafting tables and boards)
				500	*3999	Manufacturing Industries, NEC (beauty and barber chairs)
337129	Wood Television, Radio, and Sewing Machine Cabinet Manufacturing.	E	500	500	2517	Wood Television, Radio, Phonograph, and Sewing Machine Cabinets
337211	Wood Office Furniture Manufacturing.	E	500	500	2521	Wood Office Furniture
337212	Custom Architectural Woodwork and Millwork Manufacturing.	N	500	500	*2541	Wood Office and Store Fixtures, Partitions, Shelving, and Lockers (architectural woodwork, millwork, and fixtures)
337214	Office Furniture (Except Wood) Manufacturing.	E	500	500	2522	Office Furniture, Except Wood
337215	Showcase, Partition, Shelving, and Locker Manufacturing.	N	500	500	2542	Office and Store Fixtures, Partitions, Shelving and Lockers, Except Wood
			500	500	*2541	Wood Office and Store Fixtures, Partitions, Shelving, and Lockers (except counter tops, custom architectural woodwork, millwork and fixtures)
			500	500	*2426	Hardwood Dimension and Flooring Mills (wood furniture frames)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
			500	500	*3499	Fabricated Metal Products, NEC (metal furniture frames)
33791	Mattress Manufacturing	R	500	500	*2515	Mattresses, Foundations and Convertible Beds (mattresses and foundations)
33792	Blind and Shade Manufacturing	E	500	500	2591	Drapery Hardware and Window Blinds and Shades
Subsector 339 — Miscellaneous Manufacturing						
339111	Laboratory Apparatus and Furniture Manufacturing.	E	500	500	3821	Laboratory apparatus and furniture
339112	Surgical and Medical Instrument Manufacturing.	R	500	500	3841	Surgical and Medical Instruments and Apparatus
				500	*3829	Measuring and Controlling Devices, NEC (medical thermometers)
339113	Surgical Appliance and Supplies Manufacturing.	R	500	500	*2599	Furniture and Fixtures, NEC (hospital beds)
				500	*3842	Orthopedic, Prosthetic, and Surgical Appliances and Supplies (except electronic hearing aids)
339114	Dental Equipment and Supplies Manufacturing.	E	500	500	3843	Dental Equipment and Supplies
339115	Ophthalmic Goods Manufacturing	R	500	500	3851	Ophthalmic Goods
				$5.0	*5995	Optical Goods Stores (optical laboratories grinding of lenses to prescription)
339116	Dental Laboratories	E	500	$5.0	8072	Dental Laboratories
339911	Jewelry (except Costume) Manufacturing.	R	500	500	*3469	Metal Stamping, NEC (stamping coins)
				500	*3479	Coating, Engraving, and Allied Services, NEC (jewelry engraving and etching, including precious metal)
				500	3911	Jewelry, Precious Metal
339912	Silverware and Plated Ware Manufacturing.	R	500	500	*3479	Coating, Engraving, and Allied Services, NEC (silver and plated ware engraving and etching)
				500	*3914	Silverware, Plated Ware, and Stainless Steel Ware (except nonprecious metal cutlery and flatware)
339913	Jewelers' Material and Lapidary Work Manufacturing.	E	500	500	3915	Jewelers' Findings and Materials, and Lapidary Work
339914	Costume Jewelry and Novelty Manufacturing.	R	500	500	*3479	Coating, Engraving, and Allied Services, NEC (costume jewelry engraving and etching)
				500	*3499	Fabricated Metal Products, NEC (trophies of nonprecious metals)
				500	3961	Costume Jewelry and Costume Novelties, Except Precious Metal
33992	Sporting and Athletic Goods Manufacturing.	E	500	500	3949	Sporting and Athletic Goods, NEC
339931	Doll and Stuffed Toy Manufacturing.	E	500	500	3942	Dolls and Stuffed Toys
339932	Game, Toy, and Children's Vehicle Manufacturing.	R	500	500	*3944	Games, Toys, and Children's Vehicles, Except Dolls and Bicycles (except metal tricycles)
339941	Pen and Mechanical Pencil Manufacturing.	E	500	500	3951	Pens, Mechanical Pencils, and Parts
339942	Lead Pencil and Art Good Manufacturing.	R	500	500	*2531	Public Buildings and Related Furniture (blackboards)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
				500	*3579	Office Machines, NEC (pencil sharpeners, staplers and other office equipment)
				500	*3952	Lead Pencils, Crayons, and Artists' Materials (except drawing and india ink, and drafting tables and boards)
339943	Marking Device Manufacturing	E	500	500	3953	Marking Devices
339944	Carbon Paper and Inked Ribbon Manufacturing.	E	500	500	3955	Carbon Paper and Inked Ribbons
33995	Sign Manufacturing	E	500	500	3993	Signs and Advertising Specialties
33999	All Other Miscellaneous Manufacturing					
339991	Gasket, Packing, and Sealing Device Manufacturing.	E	500	500	3053	Gaskets, Packing, and Sealing Devices
339992	Musical Instrument Manufacturing	E	500	500	3931	Musical Instruments
339993	Fastener, Button, Needle and Pin Manufacturing.	R	500	500	3965	Fasteners, Buttons, Needles, and Pins
				500	*3131	Boat and Shoe Cut Stock and Findings (metal buckles)
339994	Broom, Brush and Mop Manufacturing.	R	500	500	3991	Brooms and Brushes
				500	*2392	Housefurnishings, Except Curtains and Draperies (mops, floor and dust)
339995	Burial Casket Manufacturing	E	500	500	3995	Burial Caskets
339999	All Other Miscellaneous Manufacturing.	R	500	500	*2499	Wood Products, NEC (mirror and picture frames)
				500	*3999	Manufacturing Industries, NEC (other miscellaneous products not specially provided for previously)
Sector 42—Wholesale Trade						
Subsector 421—Wholesale Trade, Durable Goods						
42111	Automobile and Other Motor Vehicle Wholesalers.	E	100	100	5012	Automobiles and Other Motor Vehicles
42112	Motor Vehicle Supplies and New Part Wholesalers.	R	100	100	*5013	Motor Vehicle Supplies and New Parts (except parts sold via retail methods)
42113	Tire and Tube Wholesalers	R	100	100	*5014	Tires and Tubes (except tires sold via retail method)
42114	Motor Vehicle Part (Used) Wholesalers.	E	100	100	5015	Motor Vehicle Parts, Used
42121	Furniture Wholesalers	R	100	100	*5021	Furniture (except furniture sold via retail method)
42122	Home Furnishing Wholesalers	R	100	100	*5023	Homefurnishings (except homefurnishings sold via retail method)
42131	Lumber, Plywood, Millwork and Wood Panel Wholesalers.	R	100	100	*5031	Lumber, Plywood, Millwork, and Wood Panels (except construction materials sold via retail method)
				$5.0	*5211	Lumber and Other Building Materials Dealers—Retail (construction materials sold by establishments known as retail in the trade'' selling via wholesale method)''
42132	Brick, Stone and Related Construction Material Wholesalers.	R	100	100	*5032	Brick, Stone, and Related Construction Materials (except construction materials sold via retail method)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
42133	Roofing, Siding and Insulation Material Wholesalers.	E	100	100	5033	Roofing, Siding, and Insulation Materials
42139	Other Construction Material Wholesalers.	R	100	100	*5039	Construction Materials, NEC (sold via wholesale method)
42141	Photographic Equipment and Supplies Wholesalers.	E	100	100	5043	Photographic Equipment and Supplies
42142	Office Equipment Wholesalers	E	100	100	5044	Office Equipment
42143	Computer and Computer Peripheral Equipment and Software Wholesalers.	R	100	100	*5045	Computers and Computer Peripherals Equipment and Software (except computers, equipment, and software sold via retail method)
42144	Other Commercial Equipment Wholesalers.	E	100	100	5046	Commercial Equipment, NEC
42145	Medical, Dental and Hospital Equipment and Supplies Wholesalers.	R	100	100	*5047	Medical, Dental and Hospital Equipment and Supplies (except medical, dental, and hospital equipment and supplies sold via retail method)
42146	Ophthalmic Goods Wholesalers	E	100	100	5048	Ophthalmic Goods
42149	Other Professional Equipment and Supplies Wholesalers.	R	100	100	*5049	Professional Equipment and Supplies, NEC (except religious and school supplies sold via retail method)
42151	Metal Service Centers and Offices	E	100	100	5051	Metals Service Centers and Offices
42152	Coal and Other Mineral and Ore Wholesalers.	E	100	100	5052	Coal and Other Mineral and Ores
42161	Electrical Apparatus and Equipment, Wiring Supplies and Construction Material Wholesalers.	R	100	100	*5063	Electrical Apparatus and Equipment, Wiring Supplies and Construction Materials (except electrical supplies sold via retail method)
42162	Electrical Appliance, Television and Radio Set Wholesalers.	E	100	100	5064	Electrical Appliances, Television and Radio Sets
42169	Other Electronic Parts and Equipment Wholesalers.	E	100	100	5065	Electronic Parts and Equipment, NEC
42171	Hardware Wholesalers	E	100	100	5072	Hardware
42172	Plumbing and Heating Equipment and Supplies (Hydronics) Wholesalers.	R	100	100	*5074	Plumbing and Heating Equipment and Supplies (Hydronics) (except plumbing equipment sold via retail method)
42173	Warm Air Heating and Air-Conditioning Equipment and Supplies Wholesalers.	E	100	100	5075	Warm Air Heating and Air-Conditioning Equipment and Supplies
42174	Refrigeration Equipment and Supplies Wholesalers.	E	100	100	5078	Refrigeration Equipment and Supplies
42181	Construction and Mining (except Petroleum) Machinery and Equipment Wholesalers.	E	100	100	5082	Construction and Mining (Except Petroleum) Machinery and Equipment
42182	Farm and Garden Machinery and Equipment Wholesalers.	R	100	100	*5083	Farm and Garden Machinery and Equipment (except lawn and garden equipment sold via retail method)
42183	Industrial Machinery and Equipment Wholesalers.	R	100	100	5084	Industrial Machinery and Equipment
				100	*5085	Industrial Supplies (fluid power accessories)
42184	Industrial Supplies Wholesalers	R	100	100	*5085	Industrial Supplies (except fluid power accessories)
42185	Service Establishment Equipment and Supplies Wholesalers.	R	100	100	*5087	Service Establishment Equipment and Supplies (except sales of the service establishment equipment and supplies sold via retail method.

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
42186	Transportation Equipment and Supplies (except Motor Vehicle) Wholesalers.	E	100	100	5088	Transportation Equipment and Supplies, Except Motor Vehicles
42191	Sporting and Recreational Goods and Supplies Wholesalers.	E	100	100	5091	Sporting and Recreational Goods and Supplies
42192	Toy and Hobby Goods and Supplies Wholesalers.	E	100	100	5092	Toys and Hobby Goods and Supplies
42193	Recyclable Material Wholesalers ..	E	100	100	5093	Scrap and Waste Materials
42194	Jewelry, Watch, Precious Stone and Precious Metal Wholesalers.	E	100	100	5094	Jewelry, Watches, Precious Stones, and Precious Metals
42199	Other Miscellaneous Durable Goods Wholesalers.	R	100	100	5099	Durable Goods, NEC
				$21.5	*7822	Motion Picture and Video Tape Distribution (prerecorded video tapes—distribution)
Subsector 422—Wholesale Trade, Nondurable Goods						
42211	Printing and Writing Paper Wholesalers.	E	100	100	5111	Printing and Writing Paper
42212	Stationary and Office Supplies Wholesalers.	R	100	100	*5112	Stationery and Office Supplies (except stationary and office supplies sold via retail method)
42213	Industrial and Personal Service Paper Wholesalers.	E	100	100	5113	Industrial and Personal Service Paper
42221	Drugs and Druggists' Sundries Wholesalers.	E	100	100	5122	Drugs, Drug Proprietaries, and Druggists' Sundries
42231	Piece Goods, Notions and Other Dry Goods Wholesalers.	R	100	100	*5131	Piece Goods, Notions, and Other Dry Goods (except piece goods converters)
42232	Men's and Boys' Clothing and Furnishings Wholesalers.	E	100	100	5136	Men's and Boys' Clothing and Furnishings
42233	Women's, Children's, and Infants' Clothing and Accessories Wholesalers.	E	100	100	5137	Women's, Children's, and Infants' Clothing and Accessories
42234	Footwear Wholesalers	E	100	100	5139	Footwear
42241	General Line Grocery Wholesalers	E	100	100	5141	Groceries, General Line
42242	Packaged Frozen Food Wholesalers.	E	100	100	5142	Packaged Frozen Foods
42243	Dairy Product (except Dried or Canned) Wholesalers.	E	100	100	5143	Dairy Products, Except Dried or Canned
42244	Poultry and Poultry Product Wholesalers.	E	100	100	5144	Poultry and Poultry Products
42245	Confectionery Wholesalers	E	100	100	5145	Confectionery
42246	Fish and Seafood Wholesalers	E	100	100	5146	Fish and Seafoods
42247	Meat and Meat Product Wholesalers.	R	100	100	*5147	Meats and Meat Products (except boxed beef)
42248	Fresh Fruit and Vegetable Wholesalers.	E	100	100	5148	Fresh Fruits and Vegetables
42249	Other Grocery and Related Products Wholesalers.	E	100	100	5149	Groceries and Related Products, NEC
42251	Grain and Field Bean Wholesalers	E	100	100	5153	Grain and Field Beans
42252	Livestock Wholesalers	E	100	100	5154	Livestock
42259	Other Farm Product Raw Material Wholesalers.	E	100	100	5159	Farm-Product Raw Materials, NEC
42261	Plastics Materials and Basic Forms and Shapes Wholesalers.	E	100	100	5162	Plastics Materials and Basic Forms and Shapes
42269	Other Chemical and Allied Products Wholesalers.	E	100	100	5169	Chemicals and Allied Products, NEC
42271	Petroleum Bulk Stations and Terminals.	R	100	100	*5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)
42272	Petroleum and Petroleum Products Wholesalers (except Bulk Stations and Terminals).	E	100	100	5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals
42281	Beer and Ale Wholesalers	E	100	100	5181	Beer and Ale

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
42282	Wine and Distilled Alcoholic Beverage Wholesalers.	E	100	100	5182	Wine and Distilled Alcoholic Beverages
42291	Farm Supplies Wholesalers	R	100	100	*5191	Farm Supplies (except lawn and garden supplies sold via retail method)
42292	Book, Periodical and Newspaper Wholesalers.	E	100	100	5192	Books, Periodicals, and Newspapers
42293	Flower, Nursery Stock and Florists' Supplies Wholesalers.	E	100	100	*5193	Flowers, Nursery Stock, and Florists' Supplies (except nursery stock sold via retail method)
42294	Tobacco and Tobacco Product Wholesalers.	E	100	100	5194	Tobacco and Tobacco Products
42295	Paint, Varnish and Supplies Wholesalers.	R	100	100	*5198	Paints, Varnishes, and Supplies (except paints, etc. sold via retail method)
				$5.0	*5231	Paint, Glass and Wallpaper Stores (sold via wholesale method)
42299	Other Miscellaneous Nondurable Goods Wholesalers.	R	100	100	*5199	Nondurable Goods, NEC (except specialty advertising)
Sectors 44–45 — Retail Trade						
Subsector 441 — Motor Vehicle and Parts Dealers						
44111	New Car Dealers	E	$21.0	$21.0	5511	Motor Vehicle Dealers (New and Used)
44112	Used Car Dealers	E	$17.0	$17.0	5521	Motor Vehicle Dealers (Used Only)
44121	Recreational Vehicle Dealers	E	$5.0	$5.0	5561	Recreational Vehicle Dealers
441221	Motorcycle Dealers	E	$5.0	$5.0	5571	Motorcycle Dealers
441222	Boat Dealers	E	$5.0	$5.0	5551	Boat Dealers
441229	All Other Motor Vehicle Dealers	E	$5.0	$5.0	5599	Automotive Dealers, NEC
	Except Aircraft Dealers, Retail		$7.5	$7.5		Except Aircraft Dealers, Retail
44131	Automotive Parts and Accessories Stores.	N	$5.0	100	*5013	Motor Vehicle Supplies and New Parts (Wholesale) (auto parts sold via retail method)
				$6.5	*5731	Radio, Television, and Consumer Electronics Stores (automobile radios)
				$5.0	*5531	Auto and Home Supply Stores (except tires and tubes)
44132	Tire Dealers	N	$5.0	100	*5014	Tires and Tubes (Wholesale) (tires and tubes sold via retail method)
				$5.0	*5531	Auto and Home Supply Stores (tires and tubes)
Subsector 442 — Furniture and Home Furnishings Stores						
44211	Furniture Stores	R	$5.0	100	*5021	Furniture (Wholesale) (sold via the retail method)
				$5.0	*5712	Furniture Stores (except custom furniture and cabinets)
44221	Floor Covering Stores	R	$5.0	100	*5023	Homefurnishings (Wholesale) (floor covering sold via retail method)
				$5.0	5713	Floor Coverings Stores
442291	Window Treatment Stores	N	$5.0	$5.0	*5714	Drapery, Curtain, and Upholstery Stores (drapery and curtain stores)
				$5.0	*5719	Miscellaneous Homefurnishings Stores (blinds and shades)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
442299	All Other Home Furnishings Stores	R	$5.0	$5.0	*5719	Miscellaneous Homefurnishings Stores (except pottery and crafts made and sold on site and frame shops, and window furnishings)
Subsector 443—Electronics and Appliance Stores						
443111	Household Appliance Stores	R	$6.5	$6.5	5722	Household Appliance Stores
				$5.0	*5999	Miscellaneous Retail Stores, NEC (personal appliance stores)
				$5.0	*7623	Refrigeration and Air-Conditioning Service and Repair Shops (sales location providing supporting refrigerator repair services as major source of receipts)
				$5.0	*7629	Electrical and Electronic Repair Shops, NEC (Services) (Sales location providing supporting appliance repair services as major source of receipts)
443112	Radio, Television and Other Electronics Stores.	R	$6.5	$6.5	*5731	Radio, Television, and Consumer Electronics Stores (except auto radios)
				$5.0	*5999	Miscellaneous Retail Stores, NEC (typewriters and telephones)
				$5.0	*7622	Radio and Television Repair Shops (sales locations providing supporting repair services as major source of receipts)
44312	Computer and Software Stores	R	$6.5	100	*5045	Computers and Computer Peripheral Equipment and Software (sold via retail method)
				$18.0	*7378	Computer Maintenance and Repair (sales locations providing supporting repair services as major source of receipts)
				$6.5	5734	Computer and Computer Software Stores
44313	Camera and Photographic Supplies Stores.	E	$5.0	$5.0	5946	Camera and Photographic Supply Stores
Subsector 444—Building Material and Garden Equipment and Supplies Dealers						
44411	Home Centers	N	$5.0	$5.0	*5211	Lumber and Other Building Materials Dealers (home center stores)
44412	Paint and Wallpaper Stores	R	$5.0	100	*5198	Paints, Varnishes, and Supplies (sold via retail method)
				$5.0	*5231	Paint, Glass, and Wallpaper Stores (paint and wallpaper)
44413	Hardware Stores	E	$5.0	$5.0	5251	Hardware Stores
44419	Other Building Material Dealers	R	$5.0	100	*5031	Lumber, Plywood, Millwork, and Wood Panels (Wholesale) (sold via retail method)
				100	*5032	Brick, Stone, and Related Construction Materials (Wholesale) (sold via retail method)
				100	*5039	Construction Materials, NEC (Wholesale) (glass sold via retail method)
				100	*5063	Electrical Apparatus and Equipment, Wiring Supplies, and Construction Materials (Wholesale) (sold via retail method)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
				100	*5074	Plumbing and Heating Equipment and Supplies (Hydronics) (sold via retail method)
				$5.0	*5211	Lumber and Other Building Materials Dealers (except home centers)
				$5.0	*5231	Paint, Glass, and Wallpaper Stores (glass)
44421	Outdoor Power Equipment Stores	N	$5.0	100	*5083	Farm and Garden Machinery and Equipment (Wholesale) (sold via retail method)
				$5.0	*5261	Retail Nurseries, Lawn and Garden Supply Stores (outdoor power equipment)
44422	Nursery and Garden Centers	R	$5.0	100	*5191	Farm Supplies (sold via retail method)
				100	*5193	Flowers, Nursery Stock, and Florists' Supplies (sold via retail method)
				$5.0	*5261	Retail Nurseries, Lawn and Garden Supply Stores (except outdoor power equipment and cut Christmas trees)
Subsector 445—Food and Beverage Stores						
44511	Supermarkets and Other Grocery (except Convenience) Stores.	N	$20.0	$20.0	*5411	Grocery Stores (except convenience stores and grocery stores with substantial general merchandise)
44512	Convenience Stores	N	$20.0	$20.0	*5411	Grocery Stores (convenience stores without gas)
44521	Meat Markets	R	$5.0	$5.0	*5421	Meat and Fish (Seafood) Markets, Including Freezer Provisioners (meat except freezer provisioners)
				$5.0	*5499	Miscellaneous Food Stores (poultry and poultry products)
44522	Fish and Seafood Markets	N	$5.0	$5.0	*5421	Meat and Fish (Seafood) Markets, Including Freezer Provisioners (seafood)
44523	Fruit and Vegetable Markets	E	$5.0	$5.0	5431	Fruit and Vegetable Markets
445291	Baked Goods Stores	R	$5.0	$5.0	*5461	Retail Bakeries (selling only)
445292	Confectionery and Nut Stores	E	$5.0	$5.0	5441	Candy, Nut and Confectionery Stores
445299	All Other Specialty Food Stores	R	$5.0	$5.0	*5499	Miscellaneous Food Stores (except food supplements, poultry stores, and stores with food for immediate consumption)
				$5.0	5451	Dairy Products Stores
44531	Beer, Wine and Liquor Stores	E	$5.0	$5.0	5921	Liquor Stores
Subsector 446—Health and Personal Care Stores						
44611	Pharmacies and Drug Stores	E	$5.0	$5.0	5912	Drug Stores and Proprietary Stores
44612	Cosmetics, Beauty Supplies and Perfume Stores.	N	$5.0	100	*5087	Service Establishment Equipment and Supplies (beauty and barber supplies sold via retail method)
				$5.0	*5999	Miscellaneous Retail Stores, NEC (cosmetics and perfumes)
44613	Optical Goods Stores	R	$5.0	$5.0	*5995	Optical Goods Stores (except labs grinding prescription lenses)
446191	Food (Health) Supplement Stores	N	$5.0	$5.0	*5499	Miscellaneous Food Stores (food supplements)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
446199	All Other Health and Personal Care Stores.	N	$5.0	100	*5047	Medical, Dental, and Hospital Equipment and Supplies (sold via retail method)
				$5.0	*5999	Miscellaneous Retail Stores, NEC (hearing aids and artificial limbs)
Subsector 447—Gasoline Stations						
44711	Gasoline Stations with Convenience Stores.	N	$20.0	$6.5	*5541	Gasoline Service Station (gasoline station with convenience store)
				$20.0	*5411	Grocery Stores (convenience store with gas)
44719	Other Gasoline Stations	N	$6.5	$6.5	*5541	Gasoline Service Station (gasoline station without convenience store)
Subsector 448—Clothing and Clothing Accessories Stores						
44811	Men's Clothing Stores	R	$6.5	$6.5	*5611	Men's and Boys' Clothing and Accessory Stores (clothing stores)
44812	Women's Clothing Stores	E	$6.5	$6.5	5621	Women's Clothing Stores
44813	Children's and Infants' Clothing Stores.	E	$5.0	$5.0	5641	Children's and Infants' Wear Stores
44814	Family Clothing Stores	E	$6.5	$6.5	5651	Family Clothing Stores
44815	Clothing Accessories Stores	N	$5.0	$6.5	*5611	Men's and Boys' Clothing and Accessory Stores (accessories)
				$5.0	*5632	Women's Accessory and Specialty Stores (accessories)
				$5.0	*5699	Miscellaneous Apparel and Accessory Stores (accessories)
44819	Other Clothing Stores	R	$5.0	$5.0	*5699	Miscellaneous Apparel and Accessory Stores (miscellaneous apparel)
				$5.0	*5632	Women's Accessory and Specialty Stores (specialty stores)
44821	Shoe Stores	E	$6.5	$6.5	5661	Shoe Stores
44831	Jewelry Stores	R	$5.0	$5.0	*5999	Miscellaneous Retailer, NEC (rough gems)
				$5.0	5944	Jewelry Stores
44832	Luggage and Leather Goods Stores.	E	$5.0	$5.0	5948	Luggage and Leather Goods Stores
Subsector 451—Sporting Goods, Hobby, Book and Music Stores						
45111	Sporting Goods Stores	R	$5.0	[9] $5.0	*7699	Repair Shops and Related Services, NEC (bicycle sales locations providing supporting repair services as major source of receipts)
				$5.0	5941	Sporting Goods Stores and Bicycle Shops
45112	Hobby, Toy and Game Stores	E	$5.0	$5.0	5945	Hobby, Toy, and Game Stores
45113	Sewing, Needlework and Piece Goods Stores.	R	$5.0	$5.0	*5714	Drapery, Curtain, and Upholstery Stores (upholstery materials)
				$5.0	5949	Sewing, Needlework, and Piece Goods Stores
45114	Musical Instrument and Supplies Stores.	E	$5.0	$5.0	5736	Musical Instruments Stores
451211	Book Stores	E	$5.0	$5.0	5942	Book Stores
451212	News Dealers and Newsstands	E	$5.0	$5.0	5994	News Dealers and Newsstands
45122	Prerecorded Tape, Compact Disc and Record Stores.	E	$5.0	$5.0	5735	Record and Prerecorded Tape Stores
Subsector 452—General Merchandise Stores						
45211	Department Stores	E	$20.0	$20.0	5311	Department Stores

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
45291	Warehouse Clubs and Superstores.	N	$20.0	$5.0	*5399	Miscellaneous General Merchandise Stores (warehouse clubs and supermarket/general merchandise combination)
				$20.0	*5411	Grocery Stores (grocery stores and supermarkets selling substantial amounts of nonfood items)
45299	All Other General Merchandise Stores.	R	$8.0	$5.0	*5399	Miscellaneous General Merchandise Stores (except warehouse club and supermarket/general merchandise combination)
				$8.0	5331	Variety Stores
Subsector 453—Miscellaneous Store Retailers						
45311	Florists	E	$5.0	$5.0	5992	Florists
45321	Office Supplies and Stationery Stores.	R	$5.0	100	*5049	Professional Equipment and Supplies, NEC (school and church supplies sold via retail method)
				100	*5112	Stationery and Office Supplies (sold via retail method)
				$5.0	5943	Stationery Stores
45322	Gift, Novelty and Souvenir Stores	E	$5.0	$5.0	5947	Gift, Novelty, and Souvenir Shops
45331	Used Merchandise Stores	R	$5.0	$5.0	*5932	Used Merchandise Stores (except pawn shops)
45391	Pet and Pet Supplies Stores	N	$5.0	$5.0	*5999	Miscellaneous Retail Stores, NEC (pet and pet supplies)
45392	Art Dealers	N	$5.0	$5.0	*5999	Miscellaneous Retail Stores, NEC (art dealer)
45393	Manufactured (Mobile) Home Dealers.	E	$9.5	$9.5	5271	Mobile Home Dealers
453991	Tobacco Stores	E	$5.0	$5.0	5993	Tobacco Stores and Stands
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores).	R	$5.0	$5.0	*5999	Miscellaneous Retail Stores, NEC (except art, pet and pet supplies, hearing aids, artificial limbs, cosmetics, telephones, typewriters, personal appliances and rough gems)
				$5.0	*5261	Retail Nurseries, Lawn and Garden Supply Stores (cut Christmas trees)
Subsector 454—Nonstore Retailers						
45411	Electronic Shopping and Mail-Order Houses.	E	$18.5	$18.5	5961	Catalog and Mail-Order Houses
45421	Vending Machine Operators	E	$5.0	$5.0	5962	Automatic Merchandise Machine Operators
454311	Heating Oil Dealers	R	$9.0	100	*5171	Petroleum Bulk Stations and Terminals (heating oil sold to final consumer)
				$9.0	5983	Fuel Oil Dealers
454312	Liquefied Petroleum Gas (Bottled Gas) Dealers.	R	$5.0	100	*5171	Petroleum Bulk Stations and Terminals (LP gas sold to final consumer)
				$5.0	5984	Liquefied Petroleum Gas (Bottled Gas) Dealers
454319	Other Fuel Dealers	E	$5.0	$5.0	5989	Fuel Dealers, NEC
45439	Other Direct Selling Establishments.	R	$5.0	$5.0	*5421	Meat and Fish (Seafood) Markets, Including Freezer Provisioners (freezer provisioners)
				$5.0	*5963	Direct Selling Establishments (except mobile food services)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
Sectors 48–49 — Transportation						
Subsector 481 — Air Transportation						
481111	Scheduled Passenger Air Transportation.	N	1,500	1,500	*4512	Air Transportation, Scheduled (passenger)
481112	Scheduled Freight Air Transportation.	N	1,500	1,500	*4512	Air Transportation, Scheduled (freight)
481211	Nonscheduled Chartered Passenger Air Transportation.	N	1,500	1,500	*4522	Air Transportation, Nonscheduled (passenger)
	Offshore Marine Air Transportation Services.		$20.5	$20.5		Offshore Marine Air Transportation Services
481212	Nonscheduled Chartered Freight Air Transportation.	N	1,500	1,500	*4522	Air Transportation, Nonscheduled (freight)
	Offshore Marine Air Transportation Services.		$20.5	$20.5		Offshore Marine Transportation Services
481219	Other Nonscheduled Air Transportation.	N	$5.0			Establishments that use general purpose aircraft to provide a variety of specialized flying services, such as the following:
				$5.0	*0721	Crop Planting, Cultivating, and Protecting (crop dusting)
				[6] $5.06	*7319	Advertising, NEC (aerial advertising)
				$5.0	*7335	Commercial Photography (aerial photography)
Subsector 482 — Rail Transportation						
482111	Line-Haul Railroads	E	1,500	1,500	4011	Railroads, Line-Haul Operating
482112	Short Line Railroads	N	500	500	*4013	Railroad Switching and Terminal Establishments (belt line and logging railroads)
Subsector 483 — Water Transportation						
483111	Deep Sea Freight Transportation ..	E	500	500	4412	Deep Sea Foreign Transportation of Freight
483112	Deep Sea Passenger Transportation.	R	500	500	*4481	Deep Sea Transportation of Passengers, Except by Ferry (deep sea activities)
483113	Coastal and Great Lakes Freight Transportation.	R	500	500	4424	Deep Sea Domestic Transportation of Freight
				500	4432	Freight Transportation on the Great Lakes — St. Lawrence Seaway
				$5.0	*4492	Towing and Tugboat Services (coastal barge operations)
483114	Coastal and Great Lakes Passenger Transportation.	R	500	500	*4481	Deep Sea Transportation of Passengers, Except by Ferry (coastal activities)
			500	500	*4482	Ferries (coastal and Great Lakes)
483211	Inland Water Freight Transportation.	R	500	500	4449	Water Transportation of Freight, NEC
				$5.0	*4492	Towing and Tugboat Services (inland barge operations)
483212	Inland Water Passenger Transportation.	R	500	500	*4482	Ferries (inland)
				500	*4489	Water Transportation of Passengers, NEC (water taxi)
Subsector 484 — Truck Transportation						
48411	General Freight Trucking, Local	N	$18.5	$18.5	*4212	Local Trucking without Storage (general freight)
				$18.5	*4214	Local Trucking with Storage (general freight)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
484121	General Freight Trucking, Long-Distance, Truckload.	N	$18.5	$18.5	*4213	Trucking, Except Local (general freight, truckload)
484122	General Freight Trucking, Long-Distance, Less Than Truckload.	N	$18.5	$18.5	*4213	Trucking, Except Local (general freight, less than truckload)
48421	Used Household and Office Goods Moving.	N	$18.5	$18.5	*4212	Local Trucking Without Storage (household goods moving)
				$18.5	*4213	Trucking, Except Local (household goods moving)
				$18.5	*4214	Local Trucking With Storage (household goods moving)
48422	Specialized Freight (except Used Goods) Trucking, Local.	N	$18.5	$18.5	*4212	Local Trucking without Storage (specialized freight)
				$18.5	*4214	Local Trucking with Storage (specialized freight)
48423	Specialized Freight (except Used Goods) Trucking, Long-Distance.	N	$18.5	$18.5	*4213	Trucking, Except Local (specialized freight)
Subsector 485—Transit and Ground Passenger Transportation						
485111	Mixed Mode Transit Systems	N	$5.0	$5.0	*4111	Local and Suburban Transit (mixed mode)
485112	Commuter Rail Systems	N	$5.0	$5.0	*4111	Local and Suburban Transit (commuter rail)
485113	Bus and Motor Vehicle Transit Systems.	N	$5.0	$5.0	*4111	Local and Suburban Transit (bus and motor vehicle)
485119	Other Urban Transit Systems	N	$5.0	$5.0	*4111	Local and Suburban Transit (other than mixed mode, commuter rail, and bus and motor vehicle)
48521	Interurban and Rural Bus Transportation.	E	$5.0	$5.0	4131	Intercity and Rural Bus Transportation
48531	Taxi Service	E	$5.0	$5.0	4121	Taxicabs
48532	Limousine Service	N	$5.0	$5.0	*4119	Local Passenger Transportation, NEC (limousine rental with driver and automobile rental with driver)
48541	School and Employee Bus Transportation.	R	$5.0	$5.0	4151	School Buses
				$5.0	*4119	Local Passenger Transportation, NEC (employee transportation)
48551	Charter Bus Industry	R	$5.0	$5.0	4141	Local Charter Bus Service
				$5.0	4142	Bus Charter Services, Except Local
485991	Special Needs Transportation	N	$5.0	$5.0	*4119	Local Passenger Transportation, NEC (special needs transportation)
485999	All Other Transit and Ground Passenger Transportation.	R	$5.0	$5.0	*4111	Local and Suburban Transit (airport transportation service)
				$5.0	*4119	Local Passenger Transportation, NEC (hearse rental with driver and carpool and vanpool operation)
Subsector 486—Pipeline Transportation						
48611	Pipeline Transportation of Crude Oil.	E	1,500	1,500	4612	Crude Petroleum Pipelines
4862	Pipeline Transportation of Natural Gas					
48621	Pipeline Transportation of Natural Gas.	R	$5.0	$5.0	4922	Natural Gas Transmission
				$5.0	*4923	Natural Gas Transmission and Distribution (transmission)
4869	Other Pipeline Transportation					
48691	Pipeline Transportation of Refined	E	1,500	1,500	4613	Refined Petroleum Pipelines
48699	All Other Pipeline Transportation ..	E	$25.0	$25.0	4619	Pipelines, NEC

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
Subsector 487—Scenic and Sightseeing Transportation						
4871	Scenic and Sightseeing Transportation, Land.					
48711	Scenic and Sightseeing Transportation, Land.	N	$5.0	$5.0	*4119	Local Passenger Transportation, NEC (sightseeing buses and cable and cog railways, except scenic)
				$5.0	*4789	Transportation Services, NEC (horse-drawn cabs and carriages)
				$5.0	*7999	Amusement and Recreation Services, NEC (scenic transport operations, land)
4872	Scenic and Sightseeing Transportation, Water					
48721	Scenic and Sightseeing Transportation, Water.	N	$5.0	500	*4489	Water Transportation of Passengers, NEC (airboats, excursion boats, and sightseeing boats)
				$5.0	*7999	Amusement and Recreation Services, NEC (charter fishing)
48799	Scenic and Sightseeing Transportation, Other.	N	$5.0	1,500	*4522	Air Transportation, Non-Scheduled (sightseeing planes)
				$5.0	*7999	Amusement and Recreation Services, NEC (aerial tramways, scenic and amusement)
Subsector 488—Support Activities for Transportation						
488111	Air Traffic Control	N	$5.0	$5.0	*4581	Airports, Flying Fields, and Airport Terminal Services (private air traffic control)
				N/A	*9621	Regulation and Administration of Transportation Programs (government air traffic control)
488119	Other Airport Operations	N	$5.0	$5.0	*4581	Airports, Flying Fields, and Airport Terminal Services (airfreight handling at airports, hangar operations, airport terminal services, aircraft storage, airports, and flying fields)
				$5.0	*4959	Sanitary Services, NEC (vacuuming of runways)
48819	Other Support Activities for Air Transportation.	N	$5.0	$5.0	*4581	Airports, Flying Fields, and Airport Terminal Services (aircraft servicing and repairing)
48821	Support Activities for Rail Transportation.	R	$5.0	500	*4013	Railroad Switching and Terminal Establishments (all but short line railroads)
				$5.0	*4741	Rental of Railroad Cars (grain leveling in railroad cars, grain trimming for railroad equipment, precooling of fruits and vegetables in connection with transportation, and railroad car cleaning, icing, ventilating, and heating)
				$5.0	*4789	Transportation Services, NEC (car loading and unloading; cleaning of railroad ballasts; dining, parlor, sleeping, and other car operations; and railroad maintenance)
48831	Port and Harbor Operations	N	$18.5	$18.5	*4491	Marine Cargo Handling (dock and pier operations)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
				$5.0	*4499	Water Transportation Services, NEC (lighthouse operations)
48832	Marine Cargo Handling	R	$18.5	$18.5	*4491	Marine Cargo Handling (all but dock and pier operations)
48833	Navigational Services to Shipping	N	$5.0	$5.0	*4492	Towing and Tugboat Services (all but barge operations)
				$5.0	*4499	Water Transportation Services, NEC (piloting vessels in and out of harbors and marine salvage)
48839	Other Support Activities for Water Transportation.	R	$5.0	$5.0	*4499	Water Transportation Services, NEC (all but lighthouse operations, piloting vessels in and out of harbors, boat and ship rental, and marine salvage)
				$5.0	*4785	Fixed Facilities and Inspection and Weighing Services for Motor Vehicle Transportation (marine cargo checkers)
				[9] $5.0	*7699	Repair Shops and Related Services, NEC (ship scaling)
48841	Motor Vehicle Towing	N	$5.0	$5.0	*7549	Automotive Services, Except Repair and Carwashes (towing)
48849	Other Support Activities for Road Transportation.	R	$5.0	$5.0	4173	Terminal and Service Facilities for Motor Vehicle Passenger Transportation
				$5.0	4231	Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation
				$5.0	*4785	Fixed Facilities and Inspection and Weighing Services for Motor Vehicle Transportation (all but marine cargo checkers)
48851	Freight Transportation Arrangement.	R	$18.5	$18.5	*4731	Arrangement of Transportation of Freight and Cargo (except freight rate auditors and tariff consultants)
488991	Packing and Crating	E	$18.5	$18.5	4783	Packing and Crating
488999	All Other Support Activities for Transportation.	R	$5.0	$5.0	*4729	Arrangement of Passenger Transportation, NEC (arrangement of carpools and vanpools)
				$5.0	*4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)
Subsector 491—Postal Service						
49111	Postal Service	R	$5.0	N/A	4311	United States Postal Service
				$5.0	*7398	Business Services, NEC (post office contract stations)
Subsector 492—Couriers and Messengers						
49211	Couriers	R	1,500	$18.5	*4215	Courier Services, Except by Air (hub and spoke intercity delivery)
				1,500	4513	Air Courier Services
4922	Local Messengers and Local Delivery					
49221	Local Messengers and Local Delivery.	N	$18.5	$18.5	*4215	Courier Services, Except by Air (local delivery)
Subsector 493—Warehousing and Storage						
49311	General Warehousing and Storage	R	$18.5	$18.5	*4225	General Warehousing and Storage (all but self-storage miniwarehouse warehousing)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
				$18.5	*4226	Special Warehousing and Storage, NEC (warehousing in foreign trade zones)
49312	Refrigerated Warehousing and Storage.	R	$18.5	$18.5	4222	Refrigerated Warehousing and Storage
				$18.5	*4226	Special Warehousing and Storage, NEC (fur storage)
49313	Farm Product Warehousing and Storage.	E	$18.5	$18.5	4221	Farm Product Warehousing and Storage
49319	Other Warehousing and Storage ..	R	$18.5	$18.5	*4226	Special Warehousing and Storage, NEC (all but fur storage and warehousing in foreign trade zones)
Sector 51 — Information						
Subsector 511 — Publishing Industries						
51111	Newspaper Publishers	E	500	500	2711	Newspapers: Publishing or Publishing and Printing
51112	Periodical Publishers	E	500	500	2721	Periodicals: Publishing or Publishing and Printing
51113	Book Publishers	R	500	500	*2731	Books: Publishing or Publishing and Printing (except music books)
51114	Database and Directory Publishers	N	500	500	*2741	Miscellaneous Publishing (database publishers)
511191	Greeting Card Publishers	R	500	500	*2771	Greeting Cards (publishing greeting cards)
511199	All Other Publishers	R	500	500	*2741	Miscellaneous Publishing (except database and sheet music publishing)
51121	Software Publishers	R	$18.0	$18.0	*7372	Prepackaged Software (software publishing)
Subsector 512 — Motion Picture and Sound Recording Industries						
51211	Motion Picture and Video Production.	E	$21.5	$21.5	7812	Motion Picture and Video Tape Production
51212	Motion Picture and Video Distribution.	R	$21.5	$21.5	*7822	Motion Picture and Video Tape Distribution (except video tape and cassette wholesalers)
				$5.0	*7829	Services Allied to Motion Picture Distribution (film libraries)
512131	Motion Picture Theaters (except Drive-Ins).	E	$5.0	$5.0	7832	Motion Picture Theaters, Except Drive-In
512132	Drive-In Motion Picture Theaters ..	E	$5.0	$5.0	7833	Drive-In Motion Picture Theaters
512191	Teleproduction and Other Post-Production Services.	N	$21.5	$21.5	*7819	Services Allied to Motion Picture Production (teleproduction and post-production services)
512199	Other Motion Picture and Video Industries.	N	$5.0	$21.5	*7819	Services Allied to Motion Picture Production (except casting bureaus, wardrobe and equipment rental, talent payment services, teleproduction and other post-production services, reproduction of videos, and film distributors and other related motion picture production services)
				$5.0	*7829	Services Allied to Motion Picture Distribution (except film libraries)
51221	Record Production	N	$5.0	$5.0	*8999	Services, NEC (record production)
51222	Integrated Record Production/Distribution.	N	750	750	*3652	Phonograph Records and Prerecorded Audio Tapes and Disks (integrated record companies, except duplication only)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
51223	Music Publishers	N	500	500	*2731	Books: Publishing or Publishing and Printing (music books)
				500	*2741	Miscellaneous Publishing (sheet music publishing)
				$5.0	*8999	Services, NEC (music publishing)
51224	Sound Recording Studios	N	$5.0	$5.0	*7389	Business Services, NEC (recording studios)
51229	Other Sound Recording Industries	N	$5.0	$5.0	*7389	Business Services, NEC (audio taping services)
				$5.0	*7922	Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services (producers of radio programs)
Subsector 513—Broadcasting and Telecommunications						
513111	Radio Networks	N	$5.0	$5.0	*4832	Radio Broadcasting Stations (networks)
513112	Radio Stations	N	$5.0	$5.0	*4832	Radio Broadcasting Stations (except networks)
51312	Television Broadcasting	N	$10.5	$10.5	4833	Television Broadcasting Stations
51321	Cable Networks	N	$11.0	$11.0	*4841	Cable and Other Pay Television Services (cable networks)
51322	Cable and Other Program Distribution.	N	$11.0	$11.0	*4841	Cable and Other Pay Television Services (except cable networks)
51331	Wired Telecommunications Carriers.	N	1,500	1,500	*4813	Telephone Communications, Except Radiotelephone (except resellers)
				$5.0	4822	Telegraph and Other Message Communications
513321	Paging	N	1,500	1,500	*4812	Radiotelephone Communications (paging carriers)
513322	Cellular and Other Wireless Telecommunications.	N	1,500	1,500	*4812	Radiotelephone Communications (cellular carriers)
				$11.0	*4899	Communications Services, NEC (radio dispatch)
51333	Telecommunications Resellers	N	1,500	1,500	*4812	Radio Communications (paging and cellular resellers)
				1,500	*4813	Telephone Communications, Except Radiotelephone (resellers)
51334	Satellite Telecommunications	N	$11.0	$11.0	*4899	Communications Services, NEC (satellite communications)
51339	Other Telecommunications	N	$11.0	$11.0	*4899	Communications Services, NEC (except radio dispatch, satellite communications)
Subsector 514—Information Services and Data Processing Services						
51411	News Syndicates	E	$5.0	$5.0	7383	News Syndicates
51412	Libraries and Archives	E	$5.0	$5.0	8231	Libraries
514191	On-Line Information Services	E	$18.0	$18.0	7375	Information Retrieval Services
514199	All Other Information Services	N	$5.0	$5.0	*8999	Services, NEC (miscellaneous information providers)
51421	Data Processing Services	E	$18.0	$18.0	7374	Computer Processing and Data Preparation and Processing Services
Sector 52—Finance and Insurance						
Subsector 522—Credit Intermediation and Related Activities						
52211	Commercial Banking	R	$100 mil in assets [8]	$100 mil in assets [7]	*6021	National Commercial Banks (banking)
				$100 mil in assets [7]	*6022	State Commercial Banks (banking)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
				$100 mil in assets [7]	6029	Commercial Banks, NEC
				$100 mil in assets [7]	*6081	Branches and Agencies of Foreign Banks (banking)
52212	Savings Institutions	R	$100 mil in assets [8]	$100 mil in assets [7]	6035	Savings Institutions, Federally Chartered
				$100 mil in assets [7]	6036	Savings Institutions, Not Federally Chartered
52213	Credit Unions	R	$100 mil in assets [8]	$100 mil in assets [7]	6061	Credit Unions, Federally Chartered
				$100 mil in assets [7]	6062	Credit Unions, Not Federally Chartered
52219	Other Depository Credit Intermediation.	N	$100 mil in assets [8]	$100 mil in assets [7]	*6022	State Commercial Banks (private and industrial banking)
5222	Non-Depository Credit Intermediation					
52221	Credit Card Issuing	N	$100 mil in assets [8]	$100 mil in assets [7]	*6021	National Commercial Banks (credit card issuing)
				$100 mil in assets [7]	*6022	State Commercial Banks (credit card issuing)
				$5.0	*6141	Personal Credit Institutions (credit card issuing)
52222	Sales Financing	N	$5.0	$5.0	*6141	Personal Credit Institutions (installment sales finance)
				$5.0	*6153	Short-Term Business Credit Institutions, Except Agricultural (business sales finance).
				$5.0	*6159	Miscellaneous Business Credit Institutions (finance leasing)
522291	Consumer Lending	R	$5.0	$5.0	*6141	Personal Credit Institutions (except installment sales finance and credit card issuing)
522292	Real Estate Credit	R	$5.0	$5.0	*6162	Mortgage Bankers and Loan Correspondents (mortgage bankers and originators)
522293	International Trade Financing	N	$100 mil in assets [8]	$100 mil in assets [7]	*6081	Branches and Agencies of Foreign Banks (international trade financing)
				$100 mil in assets [7]	6082	Foreign Trade and International Banking Institutions
				N/A	*6111	Federal and Federally-Sponsored Credit Agencies (trade banks)
				$5.0	*6159	Miscellaneous Business Credit Institutions (trade banks)
522294	Secondary Market Financing	N	$5.0	N/A	*6111	Federal and Federally Sponsored Credit Agencies (except trade banks)
				$5.0	*6159	Miscellaneous Business Credit Institutions (secondary market financing)
522298	All Other Non-Depository Credit Intermediation.	N	$5.0	$5.0	*5932	Used Merchandise Stores (pawnshops)
				$100 mil in assets [7]	*6081	Branches and Agencies of Foreign Banks (agencies)
				N/A	*6111	Federal and Federally-Sponsored Credit Agencies (except trade banks and secondary market financing)
				$5.0	*6153	Short-Term Business Credit Institutions, Except Agricultural (except credit card service and business sales finance)
				$5.0	*6159	Miscellaneous Business Credit Institutions (except trade banks and finance leasing)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
52231	Mortgage and Nonmortgage Loan Brokers.	E	$5.0	$5.0	6163	Loan Brokers
52232	Financial Transactions Processing, Reserve, and Clearing House Activities.	N	$5.0	N/A	6019	Central Reserve Depository Institutions, NEC
				$5.0	*6099	Functions Related to Depository Banking, NEC (electronic funds transfer networks and clearing house associations)
				$5.0	*6153	Short-Term Business Credit Institutions, Except Agricultural (credit card service)
				$5.0	*7389	Business Services, NEC (credit card service)
52239	Other Activities Related to Credit Intermediation.	N	$5.0	$5.0	*6099	Functions Related to Depository Banking, NEC (except money orders, electronic funds transfer networks and clearing houses, foreign currency exchanges, escrow and fiduciary agencies and deposit brokers)
				$5.0	*6162	Mortgage Bankers and Loan Correspondents (mortgage servicing)
Subsector 523—Financial Investments and Related Activities						
52311	Investment Banking and Securities Dealing.	N	$5.0	$5.0	*6211	Security Brokers, Dealers, and Flotation Companies (securities dealers and underwriters)
52312	Securities Brokerage	N	$5.0	$5.0	*6211	Security Brokers, Dealers, and Flotation Companies (security brokers)
52313	Commodity Contracts Dealing	N	$5.0	$5.0	*6099	Functions Related to depository Banking, NEC (foreign currency exchange)
				$5.0	*6799	Investors, NEC (commodity contract trading companies)
				$5.0	*6221	Commodity Contracts Brokers and Dealers (commodity dealers)
52314	Commodity Contracts Brokerage ..	N	$5.0	$5.0	*6221	Commodity Contracts Brokers and Dealers (commodity brokers)
52321	Securities and Commodity Exchanges.	E	$5.0	$5.0	6231	Security and Commodity Exchanges
52391	Miscellaneous Intermediation	N	$5.0	$5.0	*6211	Securities Brokers, Dealers and Flotation Companies (except securities and commodity dealers)
				$5.0	*6799	Investors, NEC (venture capital companies)
52392	Portfolio Management	N	$5.0	$5.0	*6282	Investment Advice (portfolio managers)
				$5.0	*6371	Pension, Health, and Welfare Funds (managers)
				$5.0	*6733	Trust, Except Educational, Religious, and Charitable (managers)
				$5.0	*6799	Investors, NEC (pool operators)
52393	Investment Advice	R	$5.0	$5.0	*6282	Investment Advice (except portfolio managers)
523991	Trust, Fiduciary and Custody Activities.	N	$5.0	$100 mil in assets [7]	*6021	National Commercial Banks (trust services)
				$100 mil in assets [7]	*6022	State Commercial Banks (trust services)
				$5.0	6091	Nondeposit Trust Facilities

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
				$5.0	*6099	Functions Related to Depository Banking, NEC (escrow and fiduciary agencies)
				$5.0	*6289	Services Allied With the Exchange of Securities or Commodities, NEC (securities custodians)
				$5.0	*6733	Trusts, Except Educational, Religious, and Charitable (administrators of private estates)
523999	Miscellaneous Financial Investment Activities.	R	$5.0	$5.0	*6099	Functions Related to Depository Banking, NEC (deposit brokers)
				$5.0	*6211	Security Brokers, Dealers, and Flotation Companies (other except security and commodity)
				$5.0	*6289	Services Allied With the Exchange of Securities or Commodities, NEC (except security custodians)
				$5.0	*6799	Investors, NEC (except pool operators and venture capital companies)
				$5.0	*6792	Oil Royalty Traders (investors on own account)
Subsector 524—Insurance Carriers and Related Activities						
52411	Direct Life, Health and Medical Insurance Carriers					
524113	Direct Life Insurance Carriers	R	$5.0	$5.0	*6311	Life Insurance (life insurers-direct)
524114	Direct Health and Medical Insurance Carriers.	R	$5.0	$5.0	*6324	Hospital and Medical Service Plans (health and medical insurers-direct)
				$5.0	*6321	Accident and Health Insurance (health and medical insurers-direct)
524126	Direct Property and Casualty Insurance Carriers.	R	1,500	1,500	*6331	Fire, Marine, and Casualty Insurance (fire, marine, and casualty insurers-direct)
				$5.0	*6351	Surety Insurance (financial responsibility insurers-direct)
524127	Direct Title Insurance Carriers	R	$5.0	$5.0	*6361	Title Insurance (title insurers-direct)
524128	Other Direct Insurance (except Life, Health and Medical) Carriers.	E	$5.0	$5.0	6399	Insurance Carriers, NEC
52413	Reinsurance Carriers	N	$5.0	$5.0	*6311	Life Insurance (reinsurers)
				$5.0	*6321	Accident and Health Insurance (reinsurers)
				$5.0	*6324	Hospital and Medical Service Plans (reinsurers)
				1,500	*6331	Fire, Marine, and Casualty Insurance (reinsurers)
				$5.0	*6351	Surety Insurance (reinsurers)
				$5.0	*6361	Title Insurance (reinsurers)
52421	Insurance Agencies and Brokerages.	R	$5.0	$5.0	*6411	Insurance Agents, Brokers and Service (insurance agents and brokers)
524291	Claims Adjusting	N	$5.0	$5.0	*6411	Insurance Agents, Brokers and Service (insurance claims adjusters)
524292	Third Party Administration of Insurance and Pension Funds.	N	$5.0	$5.0	*6371	Pension, Health, and Welfare Funds (administrators)
				$5.0	*6411	Insurance Agents, Brokers and Service (processors)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
524298	All Other Insurance Related Activities.	N	$5.0	$5.0	*6411	Insurance Agents, Brokers and Service (except processors, agents and brokers, and claims adjusters)
Subsector 525—Funds, Trusts and Other Financial Vehicles						
52511	Pension Funds	N	$5.0	$5.0	*6371	Pension, Health, and Welfare Funds (pension funds)
52512	Health and Welfare Funds	N	$5.0	$5.0	*6371	Pension, Health, and Welfare Funds (health and welfare funds)
52519	Other Insurance Funds	N	$5.0	$5.0	*6321	Accident and Health Insurance (self insurers)
				$5.0	*6324	Hospital and Medical Service Plans (self insurers)
				1,500	*6331	Fire, Marine, and Casualty Insurance (self insurers)
				$5.0	*6733	Trusts, Except Educational, Religious, and Charitable (vacation funds for employees)
52591	Open-End Investment Funds	E	$5.0	$5.0	6722	Management Investment Offices, Open-End
52592	Trusts, Estates, and Agency Accounts.	N	$5.0	$5.0	*6733	Trusts, Except Educational, Religious, and Charitable (personal trusts, estates, and agency accounts)
52593	Real Estate Investment Trusts	E	$5.0	$5.0	6798	Real Estate Investment Trusts
52599	Other Financial Vehicles	E	$5.0	$5.0	6726	Unit Investment Trusts, Face-Amount Certificate Offices, and Closed-End Management Investment Offices
Sector 53—Real Estate and Rental and Leasing						
Subsector 531—Real Estate						
53111	Lessors of Residential Buildings and Dwellings.	R	$5.0	$5.0	6513	Operators of Apartment Buildings
				$5.0	6514	Operators of Dwellings Other Than Apartment Buildings
53112	Lessors of Nonresidential Buildings (except Miniwarehouses).	N	$5.0	$5.0	*6512	Operators of Nonresidential Buildings (other except stadium and arena owners)
53113	Lessors of Miniwarehouses and Self Storage Units.	E	$18.5	$18.5	*4225	General Warehousing and Storage (miniwarehouses and self-storage units)
53119	Lessors of Other Real Estate Property.	R	$5.0	$5.0	6515	Operators of Residential Mobile Home Sites
	Except Leasing of Building Space to Federal Government by Owners.		[9] $15.0	[8] $15.0		Except Leasing of Building Space to Federal Government by Owners
				$5.0	6517	Lessors of Railroad Property
				$5.0	6519	Lessors of Real Property, NEC
53121	Offices of Real Estate Agents and Brokers.	N	[10] $1.5	[6] $1.5	*6531	Real Estate Agents Managers (agents and brokers)
531311	Residential Property Managers	N	$1.5	[6] $1.5	*6531	Real Estate Agents and Managers (managers-residential, real estate)
531312	Nonresidential Property Managers	N	$1.5	[6] $1.5	*6531	Real Estate Agents and Managers (managers-nonresidential, real estate)
53132	Offices of Real Estate Appraisers	N	$1.5	[6] $1.5	*6531	Real Estate Agents and Managers (appraisers)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
53139	Other Activities Related to Real Estate.	N	$1.5	[6] $1.5	*6531	Real Estate Agents and Managers (except real estate managers, condominium management, cemetery management, agents and brokers, and appraisers)
Subsector 532—Rental and Leasing Services						
532111	Passenger Car Rental	E	$18.5	$18.5	7514	Passenger Car Rental
532112	Passenger Car Leasing	E	$18.5	$18.5	7515	Passenger Car Leasing
53212	Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing.	N	$18.5	$18.5	7513	Truck Rental and Leasing Without Drivers
				$5.0	7519	Utility Trailers and Recreational Vehicle Rental
53221	Consumer Electronics and Appliances Rental.	N	$5.0	$5.0	*7359	Equipment Rental and Leasing, NEC (appliances, TV, VCR, and electronic equipment rental)
53222	Formal Wear and Costume Rental	N	$5.0	$5.0	*7299	Miscellaneous Personal Services, NEC (formal wear and costume rental)
				$21.5	*7819	Services Allied to Motion Picture Production (wardrobe rental for motion picture film production)
53223	Video Tape and Disc Rental	E	$5.0	$5.0	7841	Video Tape Rental
532291	Home Health Equipment Rental	N	$5.0	$5.0	*7352	Medical Equipment Rental and Leasing (home health furniture and equipment rental and leasing)
532292	Recreational Goods Rental	N	$5.0	$5.0	*7999	Amusement and Recreation Services, NEC (canoe, pleasure boats, bicycles, motorcycles, moped, go carts, etc. rental)
532299	All Other Consumer Goods Rental	R	$5.0	$5.0	*7359	Equipment Rental and Leasing, NEC (except transportation equipment, industrial equipment, and consumer electronics, appliances and home and garden equipment)
53231	General Rental Centers	N	$5.0	$5.0	*7359	Equipment Rental and Leasing, NEC (general rental centers)
532411	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing.	N	$5.0	$5.0	*4499	Water Transportation Services, NEC (boat and ship rental, commercial)
				$5.0	*4741	Rental of Railroad Cars (rental of railroad cars)
				$5.0	*7359	Equipment Rental and Leasing, NEC (airplane rental and leasing)
532412	Construction, Mining and Forestry Machinery and Equipment Rental and Leasing.	R	$5.0	$5.0	*7353	Heavy Construction Equipment Rental and Leasing (without operators)
				$5.0	*7359	Equipment Rental and Leasing, NEC (oil field and well drilling equipment)
53242	Office Machinery and Equipment Rental and Leasing.	N	$18.0	$5.0	*7359	Equipment Rental and Leasing (office machine rental and leasing)
				$18.0	7377	Computer Rental and Leasing
53249	Other Commercial and Industrial Machinery and Equipment Rental and Leasing.	N	$5.0	$5.0	*7352	Medical Equipment Rental and Leasing (medical machinery and equipment)
				$5.0	*7359	Equipment Rental and Leasing, NEC (industrial truck and equipment rental and leasing)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
				$21.5	*7819	Services Allied to Motion Picture Production (motion picture equipment rental)
				$5.0	*7922	Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services (theatrical equipment rental)
Subsector 533—Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)						
53311	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works).	R	$5.0	$5.0	*6792	Oil Royalty Traders (except investors on own account)
				$5.0	6794	Patent Owners and Lessors
Sector 54—Professional, Scientific and Technical Services						
Subsector 541—Professional, Scientific and Technical Services						
54111	Offices of Lawyers	E	$5.0	$5.0	8111	Legal Services
541191	Title Abstract and Settlement Offices.	E	$5.0	$5.0	6541	Title Abstract Offices
541199	All Other Legal Services	N	$5.0	$5.0	*7389	Business Services, NEC (process services, patent agents, notaries public, paralegal services)
541211	Offices of Certified Public Accountants.	N	$6.0	$6.0	*8721	Accounting, Auditing, and Bookkeeping Services (auditing accountants)
541213	Tax Preparation Services	E	$5.0	$5.0	7291	Tax Return Preparation Services
541214	Payroll Services	N	$6.0	$21.5	*7819	Services Allied to Motion Picture Production (talent payment services)
				$6.0	*8721	Accounting, Auditing, and Bookkeeping Services (payroll services)
541219	Other Accounting Services	N	$6.0	$6.0	*8721	Accounting, Auditing, and Bookkeeping Services (other accounting services)
54131	Architectural Services	E	$4.0	$4.0	8712	Architectural Services
54132	Landscape Architectural Services	R	$5.0	$5.0	*0781	Landscape Counseling and Planning (except horticultural consulting)
54133	Engineering Services	E	$4.0	$4.0	8711	Engineering Services
	Except Military and Aerospace Equipment and Military Weapons.		$20.0	$20.0		Except Military and Aerospace Equipment and Military Weapons
	Except Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992.		$20.0	$20.0		Except Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992
	Except Marine Engineering and Naval Architecture.		$13.5	$13.5		Except Marine Engineering and Naval Architecture
54134	Drafting Services	N	$5.0	$5.0	*7389	Business Services, NEC (drafting service)
	Except, Map Drafting		$4.0	$4.0		Except, Map Drafting Services
54135	Building Inspection Services	N	$5.0	$5.0	*7389	Business Services, NEC (home and building inspection services)
54136	Geophysical Surveying and Mapping Services.	N	$4.0	$4.0	*8713	Surveying Services (geophysical surveying)
				$5.0	*1081	Metal Mining Services (geophysical surveying)
				$5.0	*1382	Oil and Gas Field Exploration Services (geophysical surveying and mapping)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
				$5.0	*1481	Nonmetallic Minerals Services, Except Fuels (geophysical surveying)
54137	Surveying and Mapping (except Geophysical) Services.	N	$4.0	$4.0	*7389	Business Services, NEC (map making, and aerial and photogrammetric mapping services)
				$4.0	*8713	Surveying Services (except geophysical surveying)
54138	Testing Laboratories	R	$5.0	$5.0	*8734	Testing Laboratories (except veterinary testing laboratories)
54141	Interior Design Services	N	$5.0	$5.0	*7389	Business Services, NEC (interior design)
54142	Industrial Design Services	N	$5.0	$5.0	*7389	Business Services, NEC (industrial design)
54143	Graphic Design Services	R	$5.0	$5.0	7336	Commercial Art and Graphic Design
				$5.0	*8099	Health and Allied Services, NEC (medical artists)
54149	Other Specialized Design Services	N	$5.0	$5.0	*7389	Business Services, NEC (fashion, furniture, and other design services)
541511	Custom Computer Programming Services.	E	$18.0	$18.0	7371	Computer Programming Services
541512	Computer Systems Design Services.	N	$18.0	$18.0	7373	Computer Integrated Systems Design
				$18.0	*7379	Computer Related Services, NEC (computer systems consultants)
541513	Computer Facilities Management Services.	E	$18.0	$18.0	7376	Computer Facilities Management Services
541519	Other Computer Related Services	R	$18.0	$18.0	*7379	Computer Related Services, NEC (except computer systems consultants)
541611	Administrative Management and General Management Consulting Services.	N	$5.0	$5.0	*8742	Management Consulting Services (administrative management and general management consulting)
541612	Human Resources and Executive Search Consulting Services.	N	$5.0	$5.0	*8742	Management Consulting Services (human resources and personnel management consulting)
				$5.0	*7361	Employment Agencies (executive placement services)
				$5.0	*8999	Services, NEC (actuarial consulting)
541613	Marketing Consulting Services	N	$5.0	$5.0	*8742	Management Consulting Services (marketing consulting)
541614	Process, Physical Distribution and Logistics Consulting Services.	N	$5.0	$5.0	*8742	Management Consulting Services (manufacturing management, physical distribution, and site location consulting)
541618	Other Management Consulting Services.	N	$5.0	$18.5	*4731	Arrangement of Transportation of Freight and Cargo (freight rate-auditors and tariff consulting)
				$5.0	*8748	Business Consulting Services, NEC (safety consulting)
54162	Environmental Consulting Services	N	$5.0	$5.0	*8999	Services, NEC (environmental consultants)
54169	Other Scientific and Technical Consulting Services.	N	$5.0	$5.0	*0781	Landscape Counseling and Planning (horticulture consulting)
			$5.0	$5.0	*8748	Business Consulting Services, NEC (agriculture, economic, radio, and traffic consultants)
			$5.0	$5.0	*8999	Services, NEC (nuclear consultants, geologists, and physicists)
54171	Research and Development in the Physical, Engineering, and Life Sciences.	N	[11] 500	[10] 500	*8731—	Commercial Physical and Biological Research (physical and engineering sciences)
	Except:					Except:

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
	Aircraft		1,500	1,500		Aircraft
	Aircraft Parts, and Auxiliary Equipment, and Aircraft Engine Parts.		1,000	1,000		Aircraft Parts, and Auxiliary Equipment, and Aircraft Engine Parts
	Space Vehicles and Guided Missiles, their Propulsion Units, their Propulsion Units Parts, and their Auxiliary Equipment and Parts.		1,000	1,000		Space Vehicles and Guided Missiles, their Propulsion Units, their Propulsion Units Parts, and their Auxiliary Equipment and Parts
				$5.0	*8733	Noncommercial Research Organizations (physical and engineering services)
54172	Research and Development in the Social Sciences and Humanities.	N	$5.0	$5.0	*8732	Commercial Economic, Sociological, and Educational Research (social sciences and humanities)
				$5.0	*8733	Noncommercial Research Organizations (social sciences and humanities)
54181	Advertising Agencies	E	[10] $5.0	[6] $5.0	7311	Advertising Agencies
54182	Public Relations Agencies	E	$5.0	$5.0	8743	Public Relations Services
54183	Media Buying Agencies	N	$5.0	[6] $5.0	*7319	Advertising, NEC (media buying services)
54184	Media Representatives	E	$5.0	[6] $5.0	7313	Radio, Television, and Publishers' Advertising Representatives
54185	Display Advertising	N	$5.0	[6] $5.0	7312	Outdoor Advertising Services
				[6] $5.0	*7319	Advertising, NEC (display advertising, except outdoor)
54186	Direct Mail Advertising	E	$5.0	$5.0	7331	Direct Mail Advertising Services
54187	Advertising Material Distribution Services.	N	$5.0	[6] $5.0	*7319	Advertising, NEC (advertising materials distributor)
54189	Other Services Related to Advertising.	N	$5.0	[6] $5.0	*7319	Advertising, NEC (except media buying, display advertising, except outdoor; and advertising material distributors)
				100	*5199	Nondurable Goods, NEC (advertising specialties goods distributors)
				$5.0	*7389	Business Services, NEC (sign painting and other advertising related business services)
54191	Marketing Research and Public Opinion Polling.	N	$5.0	$5.0	*8732	Commercial Economic, Sociological, and Educational Research (market research and opinion research)
541921	Photography Studios, Portrait	E	$5.0	$5.0	7221	Photographic Studios, Portrait
541922	Commercial Photography	R	$5.0	$5.0	*7335	Commercial Photography (except when combined with a variety of aircraft based services)
				$5.0	*8099	Health and Allied Services, NEC (medical photography)
54193	Translation and Interpretation Services.	N	$5.0	$5.0	*7389	Business Services, NEC (translation and interpretation services)
54194	Veterinary Services	R	$5.0	$5.0	0741	Veterinary Services for Livestock
				$5.0	0742	Veterinary Services for Animal Specialties
				$5.0	*8734	Testing Laboratories (veterinary testing laboratories)
54199	All Other Professional, Scientific and Technical Services.	N	$5.0	$5.0	*7389	Business Services (appraisers, except insurance and real estate, and miscellaneous professional, scientific, and technical services)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
Sector 55 — Management of Companies and Enterprises						
Subsector 551 — Management of Companies and Enterprises						
551111	Offices of Bank Holding Companies.	E	$5.0	$5.0	6712	Offices of Bank Holding Companies
551112	Offices of Other Holding Companies.	E	$5.0	$5.0	6719	Offices of Holding Companies, NEC
Sector 56 — Administrative and Support, Waste Management and Remediation Services						
Subsector 561 — Administrative and Support Services						
56111	Office Administrative Services	R	$5.0	[6] $5.0	*8741	Management Services (except construction management)
56121	Facilities Support Services	E	[12] $5.0	[11] $5.0	8744	Facilities Support Management Services
	Except Base Maintenance		[13] $20.0	[12] $20.0		Base Maintenance
56131	Employment Placement Agencies	R	$5.0	$5.0	*7361	Employment Agencies (except executive placing services)
				$21.5	*7819	Services Allied to Motion Pictures Production (casting bureaus)
				$5.0	*7922	Theatrical Producers and Miscellaneous Theatrical Services (casting agencies)
56132	Temporary Help Services	N	$5.0	$5.0	*7363	Help Supply Services (except employee leasing service)
56133	Employee Leasing Services	N	$5.0	$5.0	*7363	Help Supply Services (except temporary help service)
56141	Document Preparation Services	N	$5.0	$5.0	*7338	Secretarial and Court Reporting (except court reporting)
561421	Telephone Answering Services	N	$5.0	$5.0	*7389	Business Services, NEC (telephone answering)
561422	Telemarketing Bureaus	N	$5.0	$5.0	*7389	Business Services, NEC (telemarketing bureaus and telephone soliciting)
561431	Private Mail Centers	N	$5.0	$5.0	*7389	Business Services, NEC (private mail centers and mail box rental)
561439	Other Business Service Centers (including Copy Shops).	R	$5.0	$5.0	7334	Photocopying and Duplicating Services
				$5.0	*7389	Business Services, NEC (business service centers, except private mail centers and mail box rental)
56144	Collection Agencies	R	$5.0	$5.0	*7322	Adjustment and Collection Services (except adjustment bureaus)
56145	Credit Bureaus	E	$5.0	$5.0	7323	Credit Reporting Services
561491	Repossession Services	N	$5.0	$5.0	*7322	Adjustment and Collection (adjustment bureaus)
				$5.0	*7389	Business Services, NEC (recovery and repossession services)
561492	Court Reporting and Stenotype Services.	N	$5.0	$5.0	*7338	Secretarial and Court Reporting (except secretarial)
561499	All Other Business Support Services.	N	$5.0	$5.0	*7389	Business Services, NEC (business support services except telephone answering, telemarketing bureaus, private mail centers and repossession services)
56151	Travel Agencies	E	[10] $1.0	[6] $1.0	4724	Travel Agencies
56152	Tour Operators	E	$5.0	$5.0	4725	Tour Operators
561591	Convention and Visitors Bureaus	N	$5.0	$5.0	*7389	Business Services, NEC (convention and visitors bureaus, tourist information bureaus)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
561599	All Other Travel Arrangement and Reservation Services.	N	$5.0	$5.0	*4729	Arrangement of Passenger Transportation, NEC (except arrangement of vanpools and carpools)
				$5.0	*7389	Business Services, NEC (reservation systems: hotel & restaurants)
				$5.0	*7999	Amusement and Recreation Services, NEC (ticket agencies)
				$5.0	*8699	Membership Organizations, NEC (motor clubs)
561611	Investigation Services	N	$9.0	$9.0	*7381	Detective, Guard, and Armored Car Services (detective services)
561612	Security Guards and Patrol Services.	N	$9.0	$9.0	*7381	Detective, Guard, and Armored Car Services (guard services)
561613	Armored Car Services	N	$9.0	$9.0	*7381	Detective, Guard, and Armored Car Services (armored car services)
561621	Security Systems Services (except Locksmiths).	R	$9.0	$9.0	7382	Security Systems Services
				$7.0	*1731	Electrical Work (burglar and fire alarm installation)
561622	Locksmiths	N	$5.0	$5.0	*7699	Repair Shops and Related Services, NEC (locksmith shops)
56171	Exterminating and Pest Control Services.	R	$5.0	$5.0	*4959	Sanitary Services, NEC (mosquito eradication)
				$5.0	*7342	Disinfecting and Pest Control Services (exterminating and pest control)
56172	Janitorial Services	R	$12.0	$5.0	*7342	Disinfecting and Pest Control Services (except exterminating)
				$12.0	7349	Building Cleaning and Maintenance Services, NEC
				$5.0	*4581	Airports, Flying Fields, and Airport Terminal Services (airplane cleaning and janitorial services)
56173	Landscaping Services	R	$5.0	$5.0	0782	Lawn and Garden Services
				$5.0	0783	Ornamental Shrub and Tree Services
56174	Carpet and Upholstery Cleaning Services.	E	$3.5	$3.5	7217	Carpet and Upholstery Cleaning
56179	Other Services to Buildings and Dwellings.	N	$5.0	$5.0	*7389	Business Services, NEC (swimming pool cleaning and maintenance)
				$5.0	*7699	Repair Shops and Related Services, NEC (furnace, duct, chimney, gutter, and drain cleaning services)
56191	Packaging and Labeling Services	N	$5.0	$5.0	*7389	Business Services, NEC (packaging and labeling services)
56192	Convention and Trade Show Organizers.	N	$5.0	$5.0	*7389	Business Services, NEC (convention and trade show services)
56199	All Other Support Services	N	$5.0	$5.0	*7389	Business Services, NEC (other support services except packaging and labeling, convention and trade shows services, convention and visitor bureaus, tourist information bureaus)
Subsector 562—Waste Management and Remediation Services						
562111	Solid Waste Collection	N	$6.0	$6.0	*4212	Local Trucking Without Storage (solid waste collection without disposal)
				$6.0	*4953	Refuse Systems (solid waste collection)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
562112	Hazardous Waste Collection	N	$6.0	$6.0	*4212	Local Trucking Without Storage (hazardous waste collection without disposal)
				$6.0	*4953	Refuse Systems (hazardous waste collection)
562119	Other Waste Collection	N	$6.0	$6.0	*4212	Local Trucking Without Storage (other waste collection without disposal)
				$6.0	*4953	Refuse Systems (other waste collection when combined with disposal)
562211	Hazardous Waste Treatment and Disposal.	N	$6.0	$6.0	*4953	Refuse Systems (hazardous waste treatment and disposal)
562212	Solid Waste Landfill	N	$6.0	$6.0	*4953	Refuse Systems (solid waste landfills)
562213	Solid Waste Combustors and Incinerators.	N	$6.0	$6.0	*4953	Refuse Systems (solid waste combustors and incinerators)
562219	Other Nonhazardous Waste Treatment and Disposal.	N	$6.0	$6.0	*4953	Refuse Systems (other nonhazardous waste treatment and disposal)
56291	Remediation Services	N	$7.0	$7.0	*1799	Special Trade Contractors, NEC (asbestos abatement and lead paint removal contractors)
	Except Environmental Remediation Services.		[14] 500			
				$5.0	*4959	Sanitary Services, NEC (remediation services)
56292	Materials Recovery Facilities	N	$6.0	$6.0	*4953	Refuse Systems (materials recovery facilities)
562991	Septic Tank and Related Services	N	$5.0	$5.0	*7359	Equipment Rental and Leasing, NEC (portable toilet rental)
				$5.0	*7699	Repair Shops and Related Services, NEC (cesspool cleaning, sewer cleaning and rodding)
562998	All Other Miscellaneous Waste Management Services.	R	$5.0	$5.0	*4959	Sanitary Services, NEC (all but remediation services, malaria control, mosquito eradication, snowplowing, street sweeping, and airport runway vacuuming)
Sector 61—Educational Services						
Subsector 611—Educational Services						
61111	Elementary and Secondary Schools.	E	$5.0	$5.0	8211	Elementary and Secondary Schools
61121	Junior Colleges	E	$5.0	$5.0	8222	Junior Colleges and Technical Institutes
61131	Colleges, Universities and Professional Schools.	E	$5.0	$5.0	8244	Colleges, Universities, and Professional Schools
61141	Business and Secretarial Schools	E	$5.0	$5.0		Business and Secretarial Schools
61142	Computer Training	R	$5.0	$5.0	*8243	Data Processing Schools (except computer repair training)
61143	Professional and Management Development Training.	N	$5.0	$5.0	*8299	Schools and Educational Services, NEC (professional and management development training)
611511	Cosmetology and Barber Schools	N	$5.0	$5.0	*7231	Beauty Shops (beauty and cosmetology schools)
				$5.0	*7241	Barber Shops (barber colleges)
611512	Flight Training	N	$18.5	$5.0	*8249	Vocational Schools, NEC (aviation schools, excluding flying instruction)
				$18.5	*8299	Schools and Educational Services, NEC (flying instruction)
611513	Apprenticeship Training	N	$5.0	$5.0	*8249	Vocational Schools, NEC (vocational apprenticeship training)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
611519	Other Technical and Trade Schools.	N	$5.0	$5.0	*8249	Vocational Schools, NEC (except aviation and flight training and apprenticeship training)
				$5.0	*8243	Data Processing Schools (computer repair training)
61161	Fine Arts Schools	N	$5.0	$5.0	*8299	Schools and Educational Services, NEC (art, drama, and music schools)
				$5.0	*7911	Dance Studios, Schools, and Halls (dance instructors, and professional and other dance schools)
61162	Sports and Recreation Instruction	N	$5.0	$5.0	*7999	Amusement and Recreation Services, NEC (baseball, basketball, bowling, gymnastic, judo, karate, parachute, scuba and skin diving, skating, ski, swimming, tennis, and other sports instruction; and sports instructional schools and camps)
61163	Language Schools	N	$5.0	$5.0	*8299	Schools and Educational Services, NEC (language schools)
611691	Exam Preparation and Tutoring	N	$5.0	$5.0	*8299	Schools and Educational Services, NEC (exam preparation and tutoring)
611692	Automobile Driving Schools	N	$5.0	$5.0	*8299	Schools and Educational Services, NEC (automobile driving instruction)
611699	All Other Miscellaneous Schools and Instruction.	N	$5.0	$5.0	*8299	Schools and Educational Services, NEC (except professional and management training, aviation and flight training, fine arts schools, language schools, exam preparation and tutoring, automobile driving schools, and educational support services)
61171	Educational Support Services	N	$5.0	$5.0	*8299	Schools and Educational Services NEC (except instruction)
				$5.0	*8748	Business Consulting Services, NEC (educational test development and evaluation services, educational testing services, and educational consultants)
Sector 62—Health Care and Social Assistance						
Subsector 621—Ambulatory Health Care Services						
621111	Offices of Physicians (except Mental Health Specialists).	N	$5.0	$5.0	*8011	Offices and Clinics of Doctors of Medicine (except mental health specialists)
				$5.0	*8031	Offices and Clinics of Doctors of Osteopathy (except mental health specialists)
621112	Offices of Physicians, Mental Health Specialists.	N	$5.0	$5.0	*8011	Offices and Clinics of Doctors of Medicine (mental health specialists)
				$5.0	*8031	Offices and Clinics of Doctors of Osteopathy (mental health specialists)
62121	Offices of Dentists	E	$5.0	$5.0	8021	Offices and Clinics of Dentists
62131	Offices of Chiropractors	E	$5.0	$5.0	8041	Offices and Clinics of Chiropractors
62132	Offices of Optometrists	E	$5.0	$5.0	8042	Offices and Clinics of Optometrists
62133	Offices of Mental Health Practitioners (except Physicians).	N	$5.0	$5.0	*8049	Offices and Clinics of Health Practitioners, NEC (mental health practitioners except physicians)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
62134	Offices of Physical, Occupational and Speech Therapists and Audiologists.	N	$5.0	$5.0	*8049	Offices and Clinics of Health Practitioners, NEC (physical, occupational, speech therapists, and audiologists)
621391	Offices of Podiatrists	E	$5.0	$5.0	8043	Offices and Clinics of Podiatrists
621399	Offices of All Other Miscellaneous Health Practitioners.	N	$5.0	$5.0	*8049	Offices and Clinics of Health Practitioners, NEC (except mental health practitioners, physical, occupational, speech therapists, and audiologists)
62141	Family Planning Centers	N	$5.0	$5.0	*8093	Specialty Outpatient Facilities, NEC (family planning centers)
				$5.0	*8099	Health and Allied Services, NEC (childbirth preparation)
62142	Outpatient Mental Health and Substance Abuse Centers.	N	$5.0	$5.0	*8093	Specialty Outpatient Facilities, NEC (mental health facilities)
621491	HMO Medical Centers	N	$5.0	$5.0	*8011	Offices and Clinics of Doctors of Medicine (HMO Medical Centers)
621492	Kidney Dialysis Centers	E	$5.0	$5.0	8092	Kidney Dialysis Centers
621493	Freestanding Ambulatory Surgical and Emergency Centers.	N	$5.0	$5.0	*8011	Offices and Clinics of Doctors of Medicine (surgical and emergency centers)
621498	All Other Outpatient Care Centers	N	$5.0	$5.0	*8093	Specialty Outpatient Facilities, NEC (except family planning and mental health centers)
621511	Medical Laboratories	R	$5.0	$5.0	*8071	Medical Laboratories (except diagnostic imaging centers)
621512	Diagnostic Imaging Centers	N	$5.0	$5.0	*8071	Medical Laboratories (diagnostic imaging centers)
62161	Home Health Care Services	E	$5.0	$5.0	8082	Home Health Care Services (home health agencies)
62191	Ambulance Services	N	$5.0	$5.0	*4119	Local Passenger Transportation, NEC (land ambulance)
				1,500	*4522	Air Transportation, Nonscheduled (air ambulance)
621991	Blood and Organ Banks	N	$5.0	$5.0	*8099	Health and Allied Services, NEC (blood and organ banks)
621999	All Other Miscellaneous Ambulatory Health Care Services.	N	$5.0	$5.0	*8099	Health and Allied Services, NEC (except blood and organ banks, medical artists, medical photography, and childbirth preparation classes)
Subsector 622—Hospitals						
62211	General Medical and Surgical Hospitals.	R	$5.0	$5.0	8062	General Medical and Surgical Hospitals
				$5.0	*8069	Specialty Hospitals, Except Psychiatric (children's hospitals)
62221	Psychiatric and Substance Abuse Hospitals.	R	$5.0	$5.0	8063	Psychiatric Hospitals
				$5.0	*8069	Specialty Hospitals, Except Psychiatric (substance abuse hospitals)
62231	Specialty (except Psychiatric and Substance Abuse) Hospitals.	R	$5.0	$5.0	*8069	Specialty Hospitals, Except Psychiatric (except children's and substance abuse hospitals)
Subsector 623—Nursing and Residential Care Facilities						
62311	Nursing Care Facilities	N	$5.0	$5.0	*8051	Skilled Nursing Care Facilities (except continuing care retirement communities)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
				$5.0	*8052	Intermediate Care Facilities (except continuing care retirement communities and mental retardation facilities)
				$5.0	*8059	Nursing and Personal Care Facilities, NEC (except continuing care retirement communities)
62321	Residential Mental Retardation Facilities.	N	$5.0	$5.0	*8052	Intermediate Care Facilities (mental retardation facilities)
62322	Residential Mental Health and Substance Abuse Facilities.	N	$5.0	$5.0	*8361	Residential Care (mental health and substance abuse facilities)
623311	Continuing Care Retirement Communities.	N	$5.0	$5.0	*8051	Skilled Nursing Care Facilities (continuing care retirement communities)
				$5.0	*8052	Intermediate Care Facilities (continuing care retirement communities)
				$5.0	*8059	Nursing and Personal Care Facilities, NEC (continuing care retirement communities)
623312	Homes for the Elderly	N	$5.0	$5.0	*8361	Residential Care (homes for the elderly)
62399	Other Residential Care Facilities ...	N	$5.0	$5.0	*8361	Residential Care (except mental health and substance abuse facilities, homes for the elderly)
Subsector 624 — Social Assistance						
62411	Child and Youth Services	N	$5.0	$5.0	*8322	Individual and Family Social Services (child and youth services)
				$5.0	*8641	Civic, Social, and Fraternal Organizations (youth development organizations)
62412	Services for the Elderly and Persons with Disabilities.	N	$5.0	$5.0	*8322	Individual and Family Social Services (services for the elderly and disabled)
62419	Other Individual and Family Services.	N	$5.0	$5.0	*8322	Individual and Family Social Services (except services for children, youth, elderly, disabled; food, housing, emergency and relief)
62421	Community Food Services	N	$5.0	$5.0	*8322	Individual and Family Social Services (food services)
624221	Temporary Shelters	N	$5.0	$5.0	*8322	Individual and Family Social Services (temporary shelter)
624229	Other Community Housing Services.	N	$5.0	$5.0	*8322	Individual and Family Social Services (housing services except temporary shelter)
62423	Emergency and Other Relief Services.	N	$5.0	$5.0	*8322	Individual and Family Social Services (emergency and relief services)
62431	Vocational Rehabilitation Services	E	$5.0	$5.0	8331	Job Training and Vocational Rehabilitation Services
62441	Child Day Care Services	R	$5.0	$5.0	8351	Child Day Care Services
				$5.0	*7299	Miscellaneous Personal Services, NEC (baby-sitting)
Sector 71 — Arts, Entertainment and Recreation						
Subsector 711 — Performing Arts, Spectator Sports and Related Industries						
71111	Theater Companies and Dinner Theaters.	N	$5.0	$5.0	*5812	Eating Places (dinner theaters)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
				$5.0	*7922	Theatrical Producers (Except Motion Pictures) and Miscellaneous Theatrical Services (theater companies, opera companies)
71112	Dance Companies	N	$5.0	$5.0	*7922	Theatrical Producers (Except Motion Pictures) and Miscellaneous Theatrical Services (ballet and dance companies)
71113	Musical Groups and Artists	N	$5.0	$5.0	*7929	Bands, Orchestras, Actors, and Entertainment Groups (musical groups and artists and orchestras)
71119	Other Performing Arts Companies	N	$5.0	$5.0	*7929	Bands, Orchestras, Actors, and Entertainment Groups, (except musical groups, artists, actors, and actresses)
				$5.0	*7999	Amusement and Recreation Services, NEC (circus companies)
711211	Sports Teams and Clubs	N	$5.0	$5.0	*7941	Professional Sports Clubs and Promoters (professional sports clubs)
711212	Race Tracks	N	$5.0	$5.0	*7948	Racing, Including Track Operations (track operations)
711219	Other Spectator Sports	N	$5.0	$5.0	*7941	Professional Sports Clubs and Promoters (except sports clubs, stadium operators, sports promoters and agents)
				$5.0	*7948	Racing, Including Track Operations (except track operators)
				$5.0	*7999	Amusement and Recreation Services, NEC (professional athletes)
71131	Promoters of Performing Arts, Sports and Similar Events with Facilities.	N	$5.0	$5.0	*6512	Operators of Nonresidential Buildings (stadium and arena owners)
				$5.0	*7922	Theatrical Procedures (Except Motion Pictures) and Miscellaneous Theatrical Services (theater operators)
				$5.0	*7941	Professional Sports Clubs and Promoters (stadium operators)
71132	Promoters of Performing Arts, Sports and Similar Events without Facilities.	N	$5.0	$5.0	*7922	Theatrical Producers (Except Motion Pictures) and Miscellaneous Theatrical Services (theatrical promoters)
				$5.0	*7941	Professional Sports Clubs and Promoters (sports promoters)
71141	Agents and Managers for Artists, Athletes, Entertainers and Other Public Figures.	N	$5.0	$5.0	*7389	Business Services, NEC (agents and brokers for authors and artists)
				$5.0	*7922	Theatrical Producers (Except Motion Pictures) and Miscellaneous Theatrical Services (theatrical agents)
				$5.0	*7941	Professional Sports Clubs and Promoters (sports agents)
71151	Independent Artists, Writers, and Performers.	N	$5.0	$21.5	*7819	Services Allied to Motion Picture Production (film directors and related motion picture production services, independent)
				$5.0	*7929	Bands, Orchestras, Actors, and Other Entertainers and Entertainment Services (actors and actresses)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
				$5.0	*8999	Services, NEC (authors, artists, and related technical services independent)
Subsector 712—Museums, Historical Sites and Similar Institutions						
71211	Museums	R	$5.0	$5.0	*8412	Museums and Art Galleries (except historic and heritage sites)
71212	Historical Sites	N	$5.0	$5.0	*8412	Museums and Art Galleries (historic and heritage sites)
71213	Zoos and Botanical Gardens	R	$5.0	$5.0	*8422	Arboreta and Botanical and Zoological Gardens (except nature parks and reserves)
71219	Nature Parks and Other Similar Institutions.	N	$5.0	$5.0	*7999	Amusement and Recreation Services, NEC (caverns and miscellaneous commercial parks)
				$5.0	*8422	Arboreta and Botanical and Zoological Gardens (nature parks and reserves)
Subsector 713—Amusement, Gambling and Recreation Industries						
71311	Amusement and Theme Parks	E	$5.0	$5.0	7996	Amusement Parks
71312	Amusement Arcades	R	$5.0	$5.0	*7993	Coin-Operated Amusement Devices (amusement arcades)
71321	Casinos (except Casino Hotels)	N	$5.0	$5.0	*7999	Amusement and Recreation Services, NEC (casinos, except hotel casinos)
71329	Other Gambling Industries	N	$5.0	$5.0	*7993	Coin-Operated Amusement Devices (slot machine operators)
				$5.0	*7999	Amusement and Recreation Services, NEC (lottery, bingo, bookie, and other gambling operations)
71391	Golf Courses and Country Clubs ..	N	$5.0	$5.0	7992	Public Golf Courses
				$5.0	*7997	Membership Sports and Recreation Clubs (golf clubs)
71392	Skiing Facilities	N	$5.0	$5.0	*7999	Amusement and Recreation Services, NEC (skiing facilities)
71393	Marinas	E	$5.0	$5.0	4493	Marinas
71394	Fitness and Recreational Sports Centers.	N	$5.0	$5.0	7993	Physical Fitness Facilities
				$5.0	*7997	Membership Sports and Recreation Clubs (recreation clubs with facilities)
				$5.0	*7999	Amusement and Recreation Services, NEC (nonmembership recreation facilities)
71395	Bowling Centers	E	$5.0	$5.0	7933	Bowling Centers
71399	All Other Amusement and Recreation Industries.	N	$5.0	$5.0	*7911	Dance Studios, Schools, and Halls (except instruction)
				$5.0	*7993	Amusement and Recreation Services, NEC (except amusement arcades and slot machine operators)
				$5.0	*7997	Membership Sports and Recreation Clubs (recreation clubs without facilities)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
			$5.0	$5.0	*7999	Amusement and Recreation Services, NEC (except circuses, professionals, athletes, caverns and other commercial parks, skiing facilities, casinos and other gambling operations, amusement and recreation facilities, sports instruction, sports equipment rent
Sector 72 — Accommodation and Food Services						
Subsector 721 — Accommodation						
72111	Hotels (except Casino Hotels) and Motels.	R	$5.0	$5.0	*7011	Hotels and Motels (hotels and motels, except casino hotels)
				$5.0	*7041	Organization Hotels and Lodging Houses, on Membership Basis (hotels)
72112	Casino Hotels	N	$5.0	$5.0	*7011	Hotels and Motels (casino hotels)
721191	Bed and Breakfast Inns	N	$5.0	$5.0	*7011	Hotels and Motels (bed and breakfast inns)
721199	All Other Traveler Accommodation	N	$5.0	$5.0	*7011	Hotels and Motels (except hotels, motels and bed and breakfast inns)
721211	RV (Recreational Vehicle) Parks and Campgrounds.	E	$5.0	$5.0	7033	Recreational Vehicle Parks and Campgrounds
721214	Recreational and Vacation Camps (except Campgrounds).	E	$5.0	$5.0	7032	Sporting and Recreational Camps
72131	Rooming and Boarding Houses	R	$5.0	$5.0	7021	Rooming and Boarding Houses
				$5.0	*7041	Organization Hotels and Lodging Houses, on Membership Basis (except hotels)
Subsector 722 — Food Services and Drinking Places						
72211	Full-Service Restaurants	N	$5.0	$5.0	*5812	Eating Places (full-service restaurants)
722211	Limited-Service Restaurants	N	$5.0	$5.0	*5812	Eating Places (limited-service restaurants)
				$5.0	*5499	Miscellaneous Food Stores (coffee shops making and serving food and beverages for immediate consumption)
722212	Cafeterias	N	$5.0	$5.0	*5812	Eating Places (cafeterias)
722213	Snack and Nonalcoholic Beverage Bars.	N	$5.0	$5.0	*5812	Eating Places (snack and nonalcoholic beverage bars)
				$5.0	*5461	Retail Bakeries (snacks)
72231	Food Service Contractors	N	$15.0	$5.0	*5812	Eating Places (food service contractors)
72232	Caterers	N	$5.0	$5.0	*5812	Eating Places (caterers)
72233	Mobile Food Services	N	$5.0	$5.0	*5963	Direct Selling Establishments (mobile food wagons)
72241	Drinking Places (Alcoholic Beverages).	E	$5.0	$5.0	5813	Drinking Places (alcoholic beverages)
Sector 81 — Other Services (except Public Administration)						
Subsector 811 — Repair and Maintenance						
811111	General Automotive Repair	E	$5.0	$5.0	7538	General Automotive Repair Shops
811112	Automotive Exhaust System Repair.	E	$5.0	$5.0	7533	Automotive Exhaust System Repair Shops
811113	Automotive Transmission Repair	E	$5.0	$5.0	7537	Automotive Transmission Repair Shops

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
811118	Other Automotive Mechanical and Electrical Repair and Maintenance.	E	$5.0	$5.0	7539	Automotive Repair Shops, NEC
811121	Automotive Body, Paint and Interior Repair and Maintenance.	E	$5.0	$5.0	7532	Top, Body, and Upholstery Repair Shops and Paint Shops
811122	Automotive Glass Replacement Shops.	E	$5.0	$5.0	7536	Automotive Glass Replacement Shops
811191	Automotive Oil Change and Lubrication Shops.	N	$5.0	$5.0	*7549	Automotive Services, Except Repair and Carwashes (lubricating service, automotive)
811192	Car Washes	E	$5.0	$5.0	7542	Carwashes
811198	All Other Automotive Repair and Maintenance.	R	$5.0	$10.5	*7534	Tire Retreading and Repair Shops (repair)
				$5.0	*7549	Automotive Services, Except Repair and Carwashes (except lubricating and towing)
811211	Consumer Electronics Repair and Maintenance.	N	$5.0	$5.0	*7622	Radio and Television Repair Shops (stereo, TV, VCR, and radio)
				$5.0	*7629	Electrical and Electronic Repair Shops, NEC (consumer equipment except computer, TV, stereo, VCR, and radio)
811212	Computer and Office Machine Repair and Maintenance.	N	$18.0	$18.0	*7378	Computer Maintenance and Repair (except sales location, providing supporting repair services as major source of revenue)
				$5.0	*7629	Electrical and Electronic Repair Shops, NEC (business and office machine repair, electrical)
				$5.0	*7699	Repair Shops and Related Services, NEC (typewriter repair)
811213	Communication Equipment Repair and Maintenance.	N	$5.0	$5.0	*7622	Radio and Television Repair Shops (telecommunication equipment repair)
				$5.0	*7629	Electrical and Electronic Repair Shops, NEC (telephone set repair)
811219	Other Electronic and Precision Equipment Repair and Maintenance.	N	$5.0	$5.0	*7629	Electrical and Electronic Repair Shops, NEC (electrical measuring instrument repair and calibration, medical equipment repair, electrical)
				$5.0	*7699	Repair Shops and Related Services, NEC (dental instrument repair, laboratory instrument repair, medical equipment and other electronic and precision equipment repair, except typewriters)
81131	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance.	R	$5.0	$5.0	*7699	Repair Shops and Related Services, NEC (other non-automotive transportation equipment and industrial machines and equipment)
				$5.0	*7623	Refrigerator and Air-Conditioning Service and Repair Shops (commercial refrigerator equipment repair)
				$5.0	*7694	Armature Rewinding Shops (repair)
811411	Home and Garden Equipment Repair and Maintenance.	N	$5.0	$5.0	*7699	Repair Shops and Related Services, NEC (lawnmower repair shops, sharpening and repairing knives, saws and tools)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
811412	Appliance Repair and Maintenance.	N	$5.0	$5.0	*7623	Refrigeration and Air-Conditioning Service and Repair Shops (except commercial)
				$5.0	*7629	Electrical and Electronic Repair Shops, NEC (appliance repair, electrical; washing machine repair; electric razor repair)
				$5.0	*7699	Repairs Shops and Related Services, NEC (gas appliance repair service, sewing machine repair, stove repair shops, and other non-electrical appliance)
81142	Reupholstery and Furniture Repair	E	$5.0	$5.0	7641	Reupholstery and Furniture Repair
81143	Footwear and Leather Goods Repair.	R	$5.0	$5.0	7251	Shoe Repair and Shoeshine Parlors
				$5.0	*7699	Repair Shops and Related Services (leather goods repair shops, luggage repair shops, pocketbook repair shops)
81149	Other Personal and Household Goods Repair and Maintenance.	N	$5.0	500	*3732	Boat Building and Repairing (pleasure boat repair)
				$5.0	*7219	Laundry and Garment Services, NEC (alteration and repair)
				$5.0	7631	Watch, Clock, and Jewelry Repair
				$5.0	7692	Welding Repair
				$5.0	*7699	Repair Shops and Related Services, NEC (except industrial, electronic, home and garden, appliance, and leather goods)
Subsector 812—Personal and Laundry Services						
812111	Barber Shops	R	$5.0	$5.0	*7241	Barber Shops (except barber colleges)
812112	Beauty Salons	R	$5.0	$5.0	*7231	Beauty Shops (except beauty and cosmetology schools and manicure and pedicure salons)
812113	Nail Salons	N	$5.0	$5.0	*7231	Beauty Shops (manicure and pedicure salons)
812191	Diet and Weight Reducing Centers	N	$5.0	$5.0	*7299	Miscellaneous Personal Services, NEC (diet and weight reducing services)
812199	Other Personal Care Services	N	$5.0	$5.0	*7299	Miscellaneous Personal Services, NEC, (personal care services)
81221	Funeral Homes and Funeral Services.	R	$5.0	$5.0	*7261	Funeral Services and Crematories (funeral homes and services)
81222	Cemeteries and Crematories	R	$5.0	[6] $1.5	*6531	Real Estate Agents and Managers (cemetery management)
				$5.0	6553	Cemetery Subdividers and Developers
				$5.0	*7261	Funeral Services and Crematories (except funeral homes)
81231	Coin-Operated Laundries and Drycleaners.	E	$5.0	$5.0	7215	Coin-Operated Laundry and Drycleaning
81232	Drycleaning and Laundry Services (except Coin-Operated).	E	$3.5	$10.5	7211	Power Laundries, Family and Commercial
				$5.0	*7389	Business Services, NEC (apparel pressing service for the trade)
				$3.5	7216	Drycleaning Plants, Except Rug Cleaning
				$5.0	7212	Garment Pressing and Agents for Laundries
				$5.0	*7219	Laundry and Garment Services, NEC (except diaper service and clothing alteration and repair)
812331	Linen Supply	R	$10.5	$10.5	7213	Linen Supply

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
				$5.0	*7219	Laundry and Garment Services, NEC, (diaper service)
812332	Industrial Launderers	E	$10.5	$10.5	7218	Industrial Launderers
81291	Pet Care (except Veterinary) Services.	R	$5.0	$5.0	*0752	Animal Specialty Services, Except Veterinary (pet care services, except veterinary)
812921	Photo Finishing Laboratories (except One-Hour).	N	$5.0	$5.0	*7384	Photofinishing Laboratories (except one-hour)
812922	One-Hour Photo Finishing	N	$5.0	$5.0	*7384	Photofinishing Laboratories (one-hour)
81293	Parking Lots and Garages	E	$5.0	$5.0	7521	Automobile Parking
81299	All Other Personal Services	R	$5.0	$5.0	*7299	Miscellaneous Personal Services, NEC (except diet and weight reducing services, personal care services, and formal wear and costume rental service)
				$5.0	*7389	Miscellaneous Business Services (bail handling)
Subsector 813—Religious, Grantmaking, Civic, Professional, and Similar Organizations						
81311	Religious Organizations	E	$5.0	$5.0	7661	Religious Organizations
813211	Grantmaking Foundations	E	$5.0	$5.0	6732	Educational, Religious, and Charitable Trust
813212	Voluntary Health Organizations	N	$5.0	$5.0	*8399	Social Services, NEC (voluntary health organizations)
813219	Other Grantmaking and Giving Services.	N	$5.0	$5.0	*8399	Social Services, NEC (grantmaking and giving)
813311	Human Rights Organizations	N	$5.0	$5.0	*8399	Social Services, NEC (human rights organizations and)
813312	Environment, Conservation and Wildlife Organizations.	N	$5.0	$5.0	*8399	Social Services, NEC (environment, conservation, and wildlife advocacy)
				$5.0	*8699	Membership Organizations, NEC (humane societies)
813319	Other Social Advocacy Organizations.	N	$5.0	$5.0	*8399	Social Services, NEC (except human rights, environment, conservation and wildlife organizations, grantmaking and giving, and voluntary health organizations)
81341	Civic and Social Organizations	N	$5.0	$5.0	*8641	Civic, Social, and Fraternal Organizations (except condominium and homeowner associations, and youth development organizations)
				$5.0	*8699	Membership Organizations, NEC (farm granges)
81391	Business Associations	R	$5.0	$5.0	8611	Business Associations
				$5.0	*8699	Membership Organizations, NEC (farm business organizations)
81392	Professional Organizations	E	$5.0	$5.0	8621	Professional Membership Organizations
81393	Labor Unions and Similar Labor Organizations.	E	$5.0	$5.0	8631	Labor Unions and Similar Labor Organizations
81394	Political Organizations	E	$5.0	$5.0	8651	Political Organizations
81399	Other Similar Organizations (except Business, Professional, Labor, and Political Organizations).	R	$5.0	[6] $1.5	*6531	Real Estate Agents and Managers (condominium associations)
				$5.0	*8641	Civic, Social, and Fraternal Organizations (condominium and homeowner associations)

TABLE IV—Continued

1997 NAICS code	1997 NAICS industry description	New, Existing or Revised industry	Proposed size standard ($ million or emp #) for NAICS industry	Existing size standard ($ million or emp #) for SIC activity	1987 SIC code (* = part of SIC code)	1987 SIC industry description
				$5.0	*8699	Membership Organizations, NEC (except farm business organizations, farm granges, and environmental, conservation, and wildlife organizations)

* * * * *

Public Administration Has Been Omitted, Since There Are No Size Standards Applicable

* * * * *

Footnotes

[As noted at the head of the above table, the following footnotes are contained in 13 CFR 121.201 and relate only to existing size standards. Proposed footnotes to the proposed size standards follow the proposed table of size standards, below in this notice.]

1. SIC code 1629—Dredging: To be considered small for purposes of Government procurement, a firm must perform at least 40 percent of the volume dredged with its own equipment or equipment owned by another small dredging concern.

2. SIC Division D—Manufacturing: For rebuilding machinery or equipment on a factory basis, or equivalent, use the SIC code for a newly manufactured product. Concerns performing major rebuilding or overhaul activities do not necessarily have to meet the criteria for being a ''manufacturer'' although the activities may be classified under a manufacturing SIC code. Ordinary repair services or preservation are not considered rebuilding.

3. SIC code 2033: For purposes of Government procurement for food canning and preserving, the standard of 500 employees excludes agricultural labor as defined in section 3306(k) of the Internal Revenue Code, 26 U.S.C. 3306(k).

4. SIC code 2911: For purposes of Government procurement, the firm may not have more than 1,500 employees nor more than 75,000 barrels per day capacity of petroleum-based inputs, including crude oil or bona fide feedstocks. Capacity includes owned or leased facilities as well as facilities under a processing agreement or an arrangement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

5. SIC code 3011: For purposes of Government procurement, a firm is small for bidding on a contract for pneumatic tires within Census Classification codes 30111 and 30112, provided that:

(1) The value of tires within Census Classification codes 30111 and 30112 which it manufactured in the United States during the previous calendar year is more than 50 percent of the value of its total worldwide manufacture,

(2) the value of pneumatic tires within Census Classification codes 30111 and 30112 comprising its total worldwide manufacture during the preceding calendar year was less than 5 percent of the value of all such tires manufactured in the United States during that period, and

(3) the value of the principal product which it manufactured or otherwise produced, or sold worldwide during the preceding calendar year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during that period.

6. SIC codes 4724, 6531, 7311, 7312, 7313, 7319, and 8741 (part): As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue.

7. A financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year. Assets for the purposes of this size standard means the assets defined according to the Federal Financial Institutions Examination Council 034 call report form.

8. SIC code 6515: Leasing of building space to the Federal Government by Owners: For Government procurement, a size standard of $15.0 million in gross receipts applies to the owners of building space leased to the Federal Government. The standard does not apply to an agent.

9. SIC codes 7699 and 3728: Contracts for the rebuilding or overhaul of aircraft ground support equipment on a contract basis are classified under SIC code 3728.

10. SIC code 8731: For research and development contracts requiring the delivery of a manufactured product, the appropriate size standard is that of the manufacturing industry.

(1) Research and Development means laboratory or other physical research and development. It does not include economic, educational, engineering, operations, systems, or other nonphysical research; or computer programming, data processing, commercial and/or medical laboratory testing.

(2) For purposes of the Small Business Innovation Research (SBIR) program only, a different definition has been established by law. See § 121.701 of these regulations.

(3) Research and development for guided missiles and space vehicles includes evaluations and simulation, and other services requiring thorough knowledge of complete missiles and spacecraft.

11. Facilities Management, a component of SIC code 8744, includes establishments, not elsewhere classified, which provide overall management and the personnel to perform a variety of related support services in operating a complete facility in or around a specific building, or within another business or Government establishment. Facilities management means furnishing three or more personnel supply services which may include, but are not limited to, secretarial services, typists, telephone answering, reproduction or mimeograph service, mailing service, financial or business management, public relations, conference planning, travel arrangements, word processing, maintaining files and/or libraries, switchboard operation, writers, bookkeeping, minor office equipment maintenance and repair, or use of information systems (not programming).

12. SIC code 8744

(1) If one of the activities of base maintenance, as defined in paragraph (2) of this endnote, can be identified with a separate industry and that activity (or industry) accounts for 50 percent or more of the value of an entire contract, then the proper size standard is that of the particular industry, and not the base maintenance size standard.

(2) ''Base Maintenance'' requires the performance of three or more separate activities in the areas of service or special trade construction industries. If services are performed, these activities must each be in a separate SIC code including, but not limited to, Janitorial and Custodial Service, Fire Prevention Service, Messenger Service, Commissary Service, Protective Guard Service, and Grounds Maintenance and Landscaping Service. If the contract requires the use of special trade contractors (plumbing, painting, plastering, carpentry, etc.), all such special trade construction activities are considered a single activity and

classified as Base Housing Maintenance. Since Base Housing Maintenance is only one activity, two additional activities are required for a contract to be classified as ''Base Maintenance.''

13. SIC code 8744

(1) For SBA assistance as a small business concern in the industry of Environmental Remediation Services, other than for Government procurement, a concern must be engaged primarily in furnishing a range of services for the remediation of a contaminated environment to an acceptable condition including, but not limited to, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, containment, remedial action, removal of contaminated materials, storage of contaminated materials and security and site closeouts. If one of such activities accounts for 50 percent or more of a concern's total revenues, employees, or other related factors, the concern's primary industry is that of the particular industry and not the Environmental Remediation Services Industry.

(2) For purposes of classifying a Government procurement as Environmental Remediation Services, the general purpose of the procurement must be to restore a contaminated environment and also the procurement must be composed of activities in three or more separate industries with separate SIC codes or, in some instances (*e.g.*, engineering), smaller sub-components of SIC codes with separate, distinct size standards. These activities may include, but are not limited to, separate activities in industries such as: Heavy Construction; Special Trade Construction; Engineering Services; Architectural Services; Management Services; Refuse Systems; Sanitary Services, Not Elsewhere Classified; Local Trucking Without Storage; Testing Laboratories; and Commercial, Physical and Biological Research. If any activity in the procurement can be identified with a separate SIC code, or component of a code with a separate distinct size standard, and that industry accounts for 50 percent or more of the value of the entire procurement, then the proper size standard is the one for that particular industry, and not the Environmental Remediation Services size standard.

Compliance With Executive Orders 12866, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), 12612 and 12778

SBA certifies that this rule, if adopted, would not be a significant rule within the meaning of Executive Order 12866. For purposes of the Regulatory Flexibility Act, SBA certifies that the rule will affect a significant number of small businesses, but that the impact of the rule on each business will not be substantial.

This rule applies to all small entities and Federal programs reserved for small entities, except those specifically excluded by Federal legislation or elsewhere under 13 CFR part 121. SBA estimates that relatively few firms would gain or lose small business status as a result of this rule. SBA intends that, in establishing this new table of size standards, firms that are now eligible for Federal small business programs will remain eligible to the maximum extent practicable.

There will be three significant benefits of this rule, if adopted in final form. (a) Size standards will be established based on the most current industry descriptions. (b) Since SBA uses Census data to establish, review, change and/or otherwise modify small business size standards, data SBA obtains from the Census Bureau will be the most recent and accurate economic data available. (c) Collecting and analyzing statistical data on small business participation in the Federal procurement process will be more accurate, particularly in the technological and services industries.

SBA does not expect that any additional costs will be imposed upon the public. In addition, the new NAICS-based table of small business size standards will not add any significant costs to Federal Government programs reserved for small businesses. Federal agencies and other users will bear the administrative costs associated with converting from the SIC system to NAICS.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, SBA certifies that this rule would not impose new reporting or record keeping requirements, other than those required of Federal agencies that collect data about small business participation in Federal government programs. For purposes of Executive Order 12612, SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent possible under standards in section 2 of the order.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs — business, Loan programs — business, Small business.

For the reasons stated in the preamble, SBA proposes to amend 13 CFR part 121 as follows.

PART 121 — SMALL BUSINESS SIZE REGULATIONS

1. The authority citation of part 121 continues to read as follows:

Authority: Pub. L. 105–13 sec. 601 *et seq.*, 111 Stat. 252; 15 U.S.C. 632(a), 634(b)(6), 637(a), and 644(c); and Pub.L. 102–486, 106 Stat. 2776, 3133.

2. Revise § 121.101 to read as follows:

§ 121.101 What are SBA size standards?

(a) SBA's size standards define whether a business entity is small and, thus, eligible for Government programs and preferences reserved for ''small business'' concerns. Size standards have been established for types of economic activity, or industry, generally under the North American Industry Classification System (NAICS).

(b) NAICS is described in the *North American Industry Classification Manual — United States, 1997,* which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; by calling 1 (800) 553–6847 or 1 (703) 605–6000; or via the Internet at http://www.ntis.gov/yellowbk/1nty205.htm. The manual includes definitions for each industry, tables showing relationships between 1997 NAICS and 1987 SICs, and a comprehensive index. NAICS assigns codes to all economic activity within twenty broad sectors. Section 121.201 provides a full table of small business size standards matched to the U.S. NAICS industry codes. A full table matching a size standard with each NAICS Industry or U.S. Industry code is also published annually by SBA in the **Federal Register**.

3. Revise § 121.201 to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

The size standards described in this section apply to all SBA programs unless otherwise specified in this part. The size standards themselves are expressed either in number of employees or annual receipts in millions of dollars, unless otherwise specified. The number of employees or annual receipts indicates the maximum allowed for a concern and its affiliates to be considered small. The following industry size standards apply to all SBA programs, unless otherwise specifically excepted in this part.

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS Codes	Description (N.E.C. = Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
	Sector 11 — Agriculture, Forestry and Fishing	
	Subsector 111 — Crop Production	
111110	Soybean Farming	$0.5
111120	Oilseed (except Soybean) Farming	$0.5
111130	Dry Pea and Bean Farming	$0.5
111140	Wheat Farming	$0.5
111150	Corn Farming	$0.5
111160	Rice Farming	$0.5
111191	Oilseed and Grain Combination Farming	$0.5
111199	All Other Grain Farming	$0.5
111211	Potato Farming	$0.5
111219	Other Vegetable (except Potato) and Melon Farming	$0.5
111310	Orange Groves	$0.5
111320	Citrus (except Orange) Groves	$0.5
111331	Apple Orchards	$0.5
111332	Grape Vineyards	$0.5
111333	Strawberry Farming	$0.5
111334	Berry (except Strawberry) Farming	$0.5
111335	Tree Nut Farming	$0.5
111336	Fruit and Tree Nut Combination Farming	$0.5
111339	Other Noncitrus Fruit Farming	$0.5
111411	Mushroom Production	$0.5
111419	Other Food Crops Grown Under Cover	$0.5
111421	Nursery and Tree Production	$0.5
111422	Floriculture Production	$0.5
111910	Tobacco Farming	$0.5
111920	Cotton Farming	$0.5
111930	Sugarcane Farming	$0.5
111940	Hay Farming	$0.5
111991	Sugar Beet Farming	$0.5
111992	Peanut Farming	$0.5
111998	All Other Miscellaneous Crop Farming	$0.5
	Subsector 112 — Animal Production	
112111	Beef Cattle Ranching and Farming	$0.5
112112	Cattle Feedlots	$1.5
112120	Dairy Cattle and Milk Production	$0.5
112210	Hog and Pig Farming	$0.5
112310	Chicken Egg Production	$9.0
112320	Broilers and Other Meat Type Chicken Production	$0.5
112330	Turkey Production	$0.5
112340	Poultry Hatcheries	$0.5
112390	Other Poultry Production	$0.5
112410	Sheep Farming	$0.5
112420	Goat Farming	$0.5
112511	Finfish Farming and Fish Hatcheries	$0.5
112512	Shellfish Farming	$0.5
112519	Other Animal Aquaculture	$0.5
112910	Apiculture	$0.5
112920	Horse and Other Equine Production	$0.5
112930	Fur-Bearing Animal and Rabbit Production	$0.5
112990	All Other Animal Production	$0.5
	Subsector 113 — Forestry and Logging	
113110	Timber Tract Operations	$5.0
113210	Forest Nurseries and Gathering of Forest Products	$5.0
113310	Logging	500
	Subsector 114 — Fishing, Hunting and Trapping	
114111	Finfish Fishing	$3.0
114112	Shellfish Fishing	$3.0
114119	Other Marine Fishing	$3.0

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS Codes	Description (N.E.C. = Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
114210	Hunting and Trapping	$3.0
	Subsector 115 — Support Activities for Agriculture and Forestry	
115111	Cotton Ginning	$5.0
115112	Soil Preparation, Planting, and Cultivating	$5.0
115113	Crop Harvesting, Primarily by Machine	$5.0
115114	Postharvest Crop Activities (except Cotton Ginning)	$5.0
115115	Farm Labor Contractors and Crew Leaders	$5.0
115116	Farm Management Services	$5.0
115210	Support Activities for Animal Production	$5.0
115310	Support Activities for Forestry	$5.0
	Sector 21 — Mining	
	Subsector 211 — Oil and Gas Extraction	
211111	Crude Petroleum and Natural Gas Extraction	500
211112	Natural Gas Liquid Extraction	500
	Subsector 212 — Mining (except Oil and Gas)	
212111	Bituminous Coal and Lignite Surface Mining	500
212112	Bituminous Coal Underground Mining	500
212113	Anthracite Mining	500
212210	Iron Ore Mining	500
212221	Gold Ore Mining	500
212222	Silver Ore Mining	500
212231	Lead Ore and Zinc Ore Mining	500
212234	Copper Ore and Nickel Ore Mining	500
212291	Uranium-Radium-Vanadium Ore Mining	500
212299	All Other Metal Ore Mining	500
212311	Dimension Stone Mining and Quarrying	500
212312	Crushed and Broken Limestone Mining and Quarrying	500
212313	Crushed and Broken Granite Mining and Quarrying	500
212319	Other Crushed and Broken Stone Mining and Quarrying	500
212321	Construction Sand and Gravel Mining	500
212322	Industrial Sand Mining	500
212324	Kaolin and Ball Clay Mining	500
212325	Clay and Ceramic and Refractory Minerals Mining	500
212391	Potash, Soda, and Borate Mineral Mining	500
212392	Phosphate Rock Mining	500
212393	Other Chemical and Fertilizer Mineral Mining	500
212399	All Other Nonmetallic Mineral Mining	500
213111	Drilling Oil and Gas Wells	500
213112	Support Activities for Oil and Gas Operations	$5.0
213113	Support Activities for Coal Mining	$5.0
213114	Support Activities for Metal Mining	$5.0
213115	Support Activities for Nonmetallic Minerals (except Fuels)	$5.0
	Sector 22 — Utilities	
	Subsector 221 — Utilities	
221111	Hydroelectric Power Generation	4 mil megawatt hours [1]
221112	Fossil Fuel Electric Power Generation	4 mil megawatt hours [1]
221113	Nuclear Electric Power Generation	4 mil megawatt hours [1]
221119	Other Electric Power Generation	4 mil megawatt hours [1]

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS Codes	Description (N.E.C. = Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
221121	Electric Bulk Power Transmission and Control	4 mil megawatt hours [1]
221122	Electric Power Distribution	4 mil megawatt hours [1]
221210	Natural Gas Distribution	500
221310	Water Supply and Irrigation Systems	$5.0
221320	Sewage Treatment Facilities	$5.0
221330	Steam and Air-Conditioning Supply	$9.0
	Sector 23 — Construction	
	Subsector 233 — Building, Developing and General Contracting	
233110	Land Subdivision and Land Development	$5.0
233210	Single Family Housing Construction	$17.0
233220	Multifamily Housing Construction	$17.0
233310	Manufacturing and Industrial Building Construction	$17.0
233320	Commercial and Institutional Building Construction	$17.0
	Subsector 234 — Heavy Construction	
234110	Highway and Street Construction	$17.0
234120	Bridge and Tunnel Construction	$17.0
234910	Water, Sewer, and Pipeline Construction	$17.0
234920	Power and Communication Transmission Line Construction	$17.0
234930	Industrial Nonbuilding Structure Construction	$17.0
234990	All Other Heavy Construction	$17.0
EXCEPT	Dredging and Surface Cleanup Activities	[2] $13.5
	Subsector 235 — Special Trade Contractors	
235110	Plumbing, Heating and Air-Conditioning Contractors	$7.0
235210	Painting and Wall Covering Contractors	$7.0
235310	Electrical Contractors	$7.0
235410	Masonry and Stone Contractors	$7.0
235420	Drywall, Plastering, Acoustical and Insulation Contractors	$7.0
235430	Tile, Marble, Terrazzo and Mosaic Contractors	$7.0
235510	Carpentry Contractors	$7.0
235520	Floor Laying and Other Floor Contractors	$7.0
235610	Roofing, Siding and Sheet Metal Contractors	$7.0
235710	Concrete Contractors	$7.0
235810	Water Well Drilling Contractors	$7.0
235910	Structural Steel Erection Contractors	$7.0
235920	Glass and Glazing Contractors	$7.0
235930	Excavation Contractors	$7.0
235940	Wrecking and Demolition Contractors	$7.0
235950	Building Equipment and Other Machinery Installation Contractors	$7.0
235990	All Other Special Trade Contractors	$7.0
EXCEPT	Base Housing Maintenance [13]	[13] $7.0
	Sectors 31–33 — Manufacturing	
	Subsector 311 — Food Manufacturing	
311111	Dog and Cat Food Manufacturing	500
311119	Other Animal Food Manufacturing	500
311211	Flour Milling	500
311212	Rice Milling	500
311213	Malt Manufacturing	500
311221	Wet Corn Milling	750
311222	Soybean Processing	500
311223	Other Oilseed Processing	1,000
311225	Fats and Oils Refining and Blending	1,000
311230	Breakfast Cereal Manufacturing	1,000
311311	Sugarcane Mills	500
311312	Cane Sugar Refining	750

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS Codes	Description (N.E.C. = Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
311313	Beet Sugar Manufacturing	750
311320	Chocolate and Confectionery Manufacturing from Cacao Beans	500
311330	Confectionery Manufacturing from Purchased Chocolate	500
311340	Non-Chocolate Confectionery Manufacturing	500
311411	Frozen Fruit, Juice and Vegetable Manufacturing	500
311412	Frozen Specialty Food Manufacturing	500
311421	Fruit and Vegetable Canning	[3] 500
311422	Specialty Canning	1,000
311423	Dried and Dehydrated Food Manufacturing	500
311511	Fluid Milk Manufacturing	500
311512	Creamery Butter Manufacturing	500
311513	Cheese Manufacturing	500
311514	Dry, Condensed, and Evaporated Dairy Product Manufacturing	500
311520	Ice Cream and Frozen Dessert Manufacturing	500
311611	Animal (except Poultry) Slaughtering	500
311612	Meat Processed from Carcasses	500
311613	Rendering and Meat By-product Processing	500
311615	Poultry Processing	500
311711	Seafood Canning	500
311712	Fresh and Frozen Seafood Processing	500
311811	Retail Bakeries	500
311812	Commercial Bakeries	500
311813	Frozen Cakes, Pies, and Other Pastries Manufacturing	500
311821	Cookie and Cracker Manufacturing	750
311822	Flour Mixes and Dough Manufacturing from Purchased Flour	500
311823	Dry Pasta Manufacturing	500
311830	Tortilla Manufacturing	500
311911	Roasted Nuts and Peanut Butter Manufacturing	500
311919	Other Snack Food Manufacturing	500
311920	Coffee and Tea Manufacturing	500
311930	Flavoring Syrup and Concentrate Manufacturing	500
311941	Mayonnaise, Dressing and Other Prepared Sauce Manufacturing	500
311942	Spice and Extract Manufacturing	500
311991	Perishable Prepared Food Manufacturing	500
311999	All Other Miscellaneous Food Manufacturing	500
	Subsector 312—Beverage and Tobacco Product Manufacturing	
312111	Soft Drink Manufacturing	500
312112	Bottled Water Manufacturing	500
312113	Ice Manufacturing	500
312120	Breweries	500
312130	Wineries	500
312140	Distilleries	750
312210	Tobacco Stemming and Redrying	500
312221	Cigarette Manufacturing	1,000
312229	Other Tobacco Product Manufacturing	500
	Subsector 313—Textile Mills	
313111	Yarn Spinning Mills	500
313112	Yarn Texturing, Throwing and Twisting Mills	500
313113	Thread Mills	500
313210	Broadwoven Fabric Mills	1,000
313221	Narrow Fabric Mills	500
313222	Schiffli Machine Embroidery	500
313230	Nonwoven Fabric Mills	500
313241	Weft Knit Fabric Mills	500
313249	Other Knit Fabric and Lace Mills	500
313311	Broadwoven Fabric Finishing Mills	1,000
313312	Textile and Fabric Finishing (except Broadwoven Fabric) Mills	500
313320	Fabric Coating Mills	1,000
	Subsector 314—Textile Product Mills	
314110	Carpet and Rug Mills	500
314121	Curtain and Drapery Mills	500
314129	Other Household Textile Product Mills	500

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS Codes	Description (N.E.C. = Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
314911	Textile Bag Mills	500
314912	Canvas and Related Product Mills	500
314991	Rope, Cordage and Twine Mills	500
314992	Tire Cord and Tire Fabric Mills	1,000
314999	All Other Miscellaneous Textile Product Mills	500
	Subsector 315—Apparel Manufacturing	
315111	Sheer Hosiery Mills	500
315119	Other Hosiery and Sock Mills	500
315191	Outerwear Knitting Mills	500
315192	Underwear and Nightwear Knitting Mills	500
315211	Men's and Boys' Cut and Sew Apparel Contractors	500
315212	Women's, Girls', and Infants' Cut and Sew Apparel Contractors	500
315221	Men's and Boys' Cut and Sew Underwear and Nightwear Manufacturing	500
315222	Men's and Boys' Cut and Sew Suit, Coat and Overcoat Manufacturing	500
315223	Men's and Boys' Cut and Sew Shirt (except Work Shirt) Manufacturing	500
315224	Men's and Boys' Cut and Sew Trouser, Slack and Jean Manufacturing	500
315225	Men's and Boys' Cut and Sew Work Clothing Manufacturing	500
315228	Men's and Boys' Cut and Sew Other Outerwear Manufacturing	500
315231	Women's and Girls' Cut and Sew Lingerie, Loungewear and Nightwear Manufacturing	500
315232	Women's and Girls' Cut and Sew Blouse and Shirt Manufacturing	500
315233	Women's and Girls' Cut and Sew Dress Manufacturing	500
315234	Women's and Girls' Cut and Sew Suit, Coat, Tailored Jacket and Skirt Manufacturing	500
315239	Women's and Girls' Cut and Sew Other Outerwear Manufacturing	500
315291	Infants' Cut and Sew Apparel Manufacturing	500
315292	Fur and Leather Apparel Manufacturing	500
315299	All Other Cut and Sew Apparel Manufacturing	500
315991	Hat, Cap and Millinery Manufacturing	500
315992	Glove and Mitten Manufacturing	500
315993	Men's and Boys' Neckwear Manufacturing	500
315999	Other Apparel Accessories and Other Apparel Manufacturing	500
	Subsector 316—Leather and Allied Product Manufacturing	
316110	Leather and Hide Tanning and Finishing	500
316211	Rubber and Plastics Footwear Manufacturing	1,000
316212	House Slipper Manufacturing	500
316213	Men's Footwear (except Athletic) Manufacturing	500
316214	Women's Footwear (except Athletic) Manufacturing	500
316219	Other Footwear Manufacturing	500
316991	Luggage Manufacturing	500
316992	Women's Handbag and Purse Manufacturing	500
316993	Personal Leather Good (except Women's Handbag and Purse) Manufacturing	500
316999	All Other Leather Good Manufacturing	500
	Subsector 321—Wood Product Manufacturing	
321113	Sawmills	500
321114	Wood Preservation	500
321211	Hardwood Veneer and Plywood Manufacturing	500
321212	Softwood Veneer and Plywood Manufacturing	500
321213	Engineered Wood Member (except Truss) Manufacturing	500
321214	Truss Manufacturing	500
321219	Reconstituted Wood Product Manufacturing	500
321911	Wood Window and Door Manufacturing	500
321912	Cut Stock, Resawing Lumber, and Planing	500
321918	Other Millwork (including Flooring)	500
321920	Wood Container and Pallet Manufacturing	500
321991	Manufactured Home (Mobile Home) Manufacturing	500
321992	Prefabricated Wood Building Manufacturing	500
321999	All Other Miscellaneous Wood Product Manufacturing	500
	Subsector 322—Paper Manufacturing	
322110	Pulp Mills	750
322121	Paper (except Newsprint) Mills	750
322122	Newsprint Mills	750

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS Codes	Description (N.E.C. = Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
322130	Paperboard Mills	750
322211	Corrugated and Solid Fiber Box Manufacturing	500
322212	Folding Paperboard Box Manufacturing	750
322213	Setup Paperboard Box Manufacturing	500
322214	Fiber Can, Tube, Drum, and Similar Products Manufacturing	500
322215	Non-Folding Sanitary Food Container Manufacturing	750
322221	Coated and Laminated Packaging Paper and Plastics Film Manufacturing	500
322222	Coated and Laminated Paper Manufacturing	500
322223	Plastics, Foil, and Coated Paper Bag Manufacturing	500
322224	Uncoated Paper and Multiwall Bag Manufacturing	500
322225	Laminated Aluminum Foil Manufacturing for Flexible Packaging Uses	500
322226	Surface-Coated Paperboard Manufacturing	500
322231	Die-Cut Paper and Paperboard Office Supplies Manufacturing	500
322232	Envelope Manufacturing	500
322233	Stationery, Tablet, and Related Product Manufacturing	500
322291	Sanitary Paper Product Manufacturing	500
322299	All Other Converted Paper Product Manufacturing	500
	Subsector 323—Printing and Related Support Activities	
323110	Commercial Lithographic Printing	500
323111	Commercial Gravure Printing	500
323112	Commercial Flexographic Printing	500
323113	Commercial Screen Printing	500
323114	Quick Printing	500
323115	Digital Printing	500
323116	Manifold Business Form Printing	500
323117	Book Printing	500
323118	Blankbook, Loose-leaf Binder and Device Manufacturing	500
323119	Other Commercial Printing	500
323121	Tradebinding and Related Work	500
323122	Prepress Services	500
	Subsector 324—Petroleum and Coal Products Manufacturing	
324110	Petroleum Refineries	[4] 1,500
324121	Asphalt Paving Mixture and Block Manufacturing	500
324122	Asphalt Shingle and Coating Materials Manufacturing	750
324191	Petroleum Lubricating Oil and Grease Manufacturing	500
324199	All Other Petroleum and Coal Products Manufacturing	500
	Subsector 325—Chemical Manufacturing	
325110	Petrochemical Manufacturing	1,000
325120	Industrial Gas Manufacturing	1,000
325131	Inorganic Dye and Pigment Manufacturing	1,000
325132	Synthetic Organic Dye and Pigment Manufacturing	750
325181	Alkalies and Chlorine Manufacturing	1,000
325182	Carbon Black Manufacturing	500
325188	All Other Basic Inorganic Chemical Manufacturing	1,000
325191	Gum and Wood Chemical Manufacturing	500
325192	Cyclic Crude and Intermediate Manufacturing	750
325193	Ethyl Alcohol Manufacturing	1,000
325199	All Other Basic Organic Chemical Manufacturing	1,000
325211	Plastics Material and Resin Manufacturing	750
325212	Synthetic Rubber Manufacturing	1,000
325221	Cellulosic Organic Fiber Manufacturing	1,000
325222	Noncellulosic Organic Fiber Manufacturing	1,000
325311	Nitrogenous Fertilizer Manufacturing	1,000
325312	Phosphatic Fertilizer Manufacturing	500
325314	Fertilizer (Mixing Only) Manufacturing	500
325320	Pesticide and Other Agricultural Chemical Manufacturing	500
325411	Medicinal and Botanical Manufacturing	750
325412	Pharmaceutical Preparation Manufacturing	750
325413	In-Vitro Diagnostic Substance Manufacturing	500
325414	Biological Product (except Diagnostic) Manufacturing	500
325510	Paint and Coating Manufacturing	500
325520	Adhesive Manufacturing	500

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS Codes	Description (N.E.C. = Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
325611	Soap and Other Detergent Manufacturing	750
325612	Polish and Other Sanitation Good Manufacturing	500
325613	Surface Active Agent Manufacturing	500
325620	Toilet Preparation Manufacturing	500
325910	Printing Ink Manufacturing	500
325920	Explosives Manufacturing	750
325991	Custom Compounding of Purchased Resin	500
325992	Photographic Film, Paper, Plate and Chemical Manufacturing	500
325998	All Other Chemical Product and Preparation Manufacturing	500
	Subsector 326—Plastics and Rubber Products Manufacturing	
326111	Unsupported Plastics Bag Manufacturing	500
326112	Unsupported Plastics Packaging Film and Sheet Manufacturing	500
326113	Unsupported Plastics Film and Sheet (except Packaging) Manufacturing	500
326121	Unsupported Plastics Profile Shape Manufacturing	500
326122	Plastics Pipe and Pipe Fitting Manufacturing	500
326130	Laminated Plastics Plate, Sheet and Shape Manufacturing	500
326140	Polystyrene Foam Product Manufacturing	500
326150	Urethane and Other Foam Product (except Polystyrene) Manufacturing	500
326160	Plastics Bottle Manufacturing	500
326191	Plastics Plumbing Fixture Manufacturing	500
326192	Resilient Floor Covering Manufacturing	750
326199	All Other Plastics Product Manufacturing	500
326211	Tire Manufacturing (except Retreading)	[5] 1,000
326212	Tire Retreading	500
326220	Rubber and Plastics Hoses and Belting Manufacturing	500
326291	Rubber Product Manufacturing for Mechanical Use	500
326299	All Other Rubber Product Manufacturing	500
	Subsector 327—Nonmetallic Mineral Product Manufacturing	
327111	Vitreous China Plumbing Fixtures and China and Earthenware Bathroom Accessories Manufacturing	750
327112	Vitreous China, Fine Earthenware and Other Pottery Product Manufacturing	500
327113	Porcelain Electrical Supply Manufacturing	500
327121	Brick and Structural Clay Tile Manufacturing	500
327122	Ceramic Wall and Floor Tile Manufacturing	500
327123	Other Structural Clay Product Manufacturing	500
327124	Clay Refractory Manufacturing	500
327125	Nonclay Refractory Manufacturing	750
327211	Flat Glass Manufacturing	1,000
327212	Other Pressed and Blown Glass and Glassware Manufacturing	750
327213	Glass Container Manufacturing	750
327215	Glass Product Manufacturing Made of Purchased Glass	500
327310	Cement Manufacturing	750
327320	Ready-Mix Concrete Manufacturing	500
327331	Concrete Block and Brick Manufacturing	500
327332	Concrete Pipe Manufacturing	500
327390	Other Concrete Product Manufacturing	500
327410	Lime Manufacturing	500
327420	Gypsum Product Manufacturing	1,000
327910	Abrasive Product Manufacturing	500
327991	Cut Stone and Stone Product Manufacturing	500
327992	Ground or Treated Mineral and Earth Manufacturing	500
327993	Mineral Wool Manufacturing	750
327999	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing	500
	Subsector 331—Primary Metal Manufacturing	
331111	Iron and Steel Mills	1,000
331112	Electrometallurgical Ferroalloy Product Manufacturing	750
331210	Iron and Steel Pipe and Tube Manufacturing from Purchased Steel	1,000
331221	Cold-Rolled Steel Shape Manufacturing	1,000
331222	Steel Wire Drawing	1,000
331311	Alumina Refining	1,000
331312	Primary Aluminum Production	1,000
331314	Secondary Smelting and Alloying of Aluminum	750
331315	Aluminum Sheet, Plate and Foil Manufacturing	750

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS Codes	Description (N.E.C. = Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
331316	Aluminum Extruded Product Manufacturing	750
331319	Other Aluminum Rolling and Drawing	750
331411	Primary Smelting and Refining of Copper	1,000
331419	Primary Smelting and Refining of Nonferrous Metal (except Copper and Aluminum)	750
331421	Copper Rolling, Drawing and Extruding	750
331422	Copper Wire (except Mechanical) Drawing	1,000
331423	Secondary Smelting, Refining, and Alloying of Copper	750
331491	Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing and Extruding	750
331492	Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum)	750
331511	Iron Foundries	500
331512	Steel Investment Foundries	500
331513	Steel Foundries, (except Investment)	500
331521	Aluminum Die-Casting Foundries	500
331522	Nonferrous (except Aluminum) Die-Casting Foundries	500
331524	Aluminum Foundries (except Die-Casting)	500
331525	Copper Foundries (except Die-Casting)	500
331528	Other Nonferrous Foundries (except Die-Casting)	500
	Subsector 332—Fabricated Metal Product Manufacturing	
332111	Iron and Steel Forging	500
332112	Nonferrous Forging	500
332114	Custom Roll Forming	500
332115	Crown and Closure Manufacturing	500
332116	Metal Stamping	500
332117	Powder Metallurgy Part Manufacturing	500
332211	Cutlery and Flatware (except Precious) Manufacturing	500
332212	Hand and Edge Tool Manufacturing	500
332213	Saw Blade and Handsaw Manufacturing	500
332214	Kitchen Utensil, Pot and Pan Manufacturing	500
332311	Prefabricated Metal Building and Component Manufacturing	500
332312	Fabricated Structural Metal Manufacturing	500
332313	Plate Work Manufacturing	500
332321	Metal Window and Door Manufacturing	500
332322	Sheet Metal Work Manufacturing	500
332323	Ornamental and Architectural Metal Work Manufacturing	500
332410	Power Boiler and Heat Exchanger Manufacturing	500
332420	Metal Tank (Heavy Gauge) Manufacturing	500
332431	Metal Can Manufacturing	1,000
332439	Other Metal Container Manufacturing	500
332510	Hardware Manufacturing	500
332611	Spring (Heavy Gauge) Manufacturing	500
332612	Spring (Light Gauge) Manufacturing	500
332618	Other Fabricated Wire Product Manufacturing	500
332710	Machine Shops	500
332721	Precision Turned Product Manufacturing	500
332722	Bolt, Nut, Screw, Rivet and Washer Manufacturing	500
332811	Metal Heat Treating	750
332812	Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers	500
332813	Electroplating, Plating, Polishing, Anodizing and Coloring	500
332911	Industrial Valve Manufacturing	500
332912	Fluid Power Valve and Hose Fitting Manufacturing	500
332913	Plumbing Fixture Fitting and Trim Manufacturing	500
332919	Other Metal Valve and Pipe Fitting Manufacturing	500
332991	Ball and Roller Bearing Manufacturing	750
332992	Small Arms Ammunition Manufacturing	1,000
332993	Ammunition (except Small Arms) Manufacturing	1,500
332994	Small Arms Manufacturing	1,000
332995	Other Ordnance and Accessories Manufacturing	500
332996	Fabricated Pipe and Pipe Fitting Manufacturing	500
332997	Industrial Pattern Manufacturing	500
332998	Enameled Iron and Metal Sanitary Ware Manufacturing	750
332999	All Other Miscellaneous Fabricated Metal Product Manufacturing	500
	Subsector 333—Machinery Manufacturing[6]	
333111	Farm Machinery and Equipment Manufacturing	500
333112	Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing	500

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS Codes	Description (N.E.C. = Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
333120	Construction Machinery Manufacturing	750
333131	Mining Machinery and Equipment Manufacturing	500
333132	Oil and Gas Field Machinery and Equipment Manufacturing	500
333210	Sawmill and Woodworking Machinery Manufacturing	500
333220	Plastics and Rubber Industry Machinery Manufacturing	500
333291	Paper Industry Machinery Manufacturing	500
333292	Textile Machinery Manufacturing	500
333293	Printing Machinery and Equipment Manufacturing	500
333294	Food Product Machinery Manufacturing	500
333295	Semiconductor Machinery Manufacturing	500
333298	All Other Industrial Machinery Manufacturing	500
333311	Automatic Vending Machine Manufacturing	500
333312	Commercial Laundry, Drycleaning and Pressing Machine Manufacturing	500
333313	Office Machinery Manufacturing	1,000
333314	Optical Instrument and Lens Manufacturing	500
333315	Photographic and Photocopying Equipment Manufacturing	500
333319	Other Commercial and Service Industry Machinery Manufacturing	500
333411	Air Purification Equipment Manufacturing	500
333412	Industrial and Commercial Fan and Blower Manufacturing	500
333414	Heating Equipment (except Warm Air Furnaces) Manufacturing	500
333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing	750
333511	Industrial Mold Manufacturing	500
333512	Machine Tool (Metal Cutting Types) Manufacturing	500
333513	Machine Tool (Metal Forming Types) Manufacturing	500
333514	Special Die and Tool, Die Set, Jig and Fixture Manufacturing	500
333515	Cutting Tool and Machine Tool Accessory Manufacturing	500
333516	Rolling Mill Machinery and Equipment Manufacturing	500
333518	Other Metalworking Machinery Manufacturing	500
333611	Turbine and Turbine Generator Set Unit Manufacturing	1,000
333612	Speed Changer, Industrial High-Speed Drive and Gear Manufacturing	500
333613	Mechanical Power Transmission Equipment Manufacturing	500
333618	Other Engine Equipment Manufacturing	1,000
333911	Pump and Pumping Equipment Manufacturing	500
333912	Air and Gas Compressor Manufacturing	500
333913	Measuring and Dispensing Pump Manufacturing	500
333921	Elevator and Moving Stairway Manufacturing	500
333922	Conveyor and Conveying Equipment Manufacturing	500
333923	Overhead Traveling Crane, Hoist and Monorail System Manufacturing	500
333924	Industrial Truck, Tractor, Trailer and Stacker Machinery Manufacturing	750
333991	Power-Driven Hand Tool Manufacturing	500
333992	Welding and Soldering Equipment Manufacturing	500
333993	Packaging Machinery Manufacturing	500
333994	Industrial Process Furnace and Oven Manufacturing	500
333995	Fluid Power Cylinder and Actuator Manufacturing	500
333996	Fluid Power Pump and Motor Manufacturing	500
333997	Scale and Balance (except Laboratory) Manufacturing	500
333999	All Other Miscellaneous General Purpose Machinery Manufacturing	500
	Subsector 334—Computer and Electronic Product Manufacturing [6]	
334111	Electronic Computer Manufacturing	1,000
334112	Computer Storage Device Manufacturing	1,000
334113	Computer Terminal Manufacturing	1,000
334119	Other Computer Peripheral Equipment Manufacturing	1,000
334210	Telephone Apparatus Manufacturing	1,000
334220	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing	750
334290	Other Communications Equipment Manufacturing	750
334310	Audio and Video Equipment Manufacturing	750
334411	Electron Tube Manufacturing	750
334412	Bare Printed Circuit Board Manufacturing	500
334413	Semiconductor and Related Device Manufacturing	500
334414	Electronic Capacitor Manufacturing	500
334415	Electronic Resistor Manufacturing	500
334416	Electronic Coil, Transformer, and Other Inductor Manufacturing	500
334417	Electronic Connector Manufacturing	500
334418	Printed Circuit Assembly (Electronic Assembly) Manufacturing	500
334419	Other Electronic Component Manufacturing	500

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS Codes	Description (N.E.C. = Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
334510	Electromedical and Electrotherapeutic Apparatus Manufacturing	500
334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing	750
334512	Automatic Environmental Control Manufacturing for Residential, Commercial and Appliance Use	500
334513	Instruments and Related Products Manufacturing for Measuring, Displaying, and Controlling Industrial Process Variables	500
334514	Totalizing Fluid Meter and Counting Device Manufacturing	500
334515	Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals	500
334516	Analytical Laboratory Instrument Manufacturing	500
334517	Irradiation Apparatus Manufacturing	500
334518	Watch, Clock, and Part Manufacturing	500
334519	Other Measuring and Controlling Device Manufacturing	500
334611	Software Reproducing	500
334612	Prerecorded Compact Disc (except Software), Tape, and Record Reproducing	750
334613	Magnetic and Optical Recording Media Manufacturing	1,000
	Subsector 335—Electrical Equipment, Appliance and Component Manufacturing [6]	
335110	Electric Lamp Bulb and Part Manufacturing	1,000
335121	Residential Electric Lighting Fixture Manufacturing	500
335122	Commercial, Industrial and Institutional Electric Lighting Fixture Manufacturing	500
335129	Other Lighting Equipment Manufacturing	500
335211	Electric Housewares and Household Fan Manufacturing	750
335212	Household Vacuum Cleaner Manufacturing	750
335221	Household Cooking Appliance Manufacturing	750
335222	Household Refrigerator and Home Freezer Manufacturing	1,000
335224	Household Laundry Equipment Manufacturing	1,000
335228	Other Major Household Appliance Manufacturing	500
335311	Power, Distribution and Specialty Transformer Manufacturing	750
335312	Motor and Generator Manufacturing	1,000
335313	Switchgear and Switchboard Apparatus Manufacturing	750
335314	Relay and Industrial Control Manufacturing	750
335911	Storage Battery Manufacturing	500
335912	Primary Battery Manufacturing	1,000
335921	Fiber Optic Cable Manufacturing	1,000
335929	Other Communication and Energy Wire Manufacturing	1,000
335931	Current-Carrying Wiring Device Manufacturing	500
335932	Noncurrent-Carrying Wiring Device Manufacturing	500
335991	Carbon and Graphite Product Manufacturing	750
335999	All Other Miscellaneous Electrical Equipment and Component Manufacturing	500
	Subsector 336—Transportation Equipment Manufacturing [6]	
336111	Automobile Manufacturing	1,000
336112	Light Truck and Utility Vehicle Manufacturing	1,000
336120	Heavy Duty Truck Manufacturing	1,000
336211	Motor Vehicle Body Manufacturing	1,000
336212	Truck Trailer Manufacturing	500
336213	Motor Home Manufacturing	1,000
336214	Travel Trailer and Camper Manufacturing	500
336311	Carburetor, Piston, Piston Ring and Valve Manufacturing	500
336312	Gasoline Engine and Engine Parts Manufacturing	750
336321	Vehicular Lighting Equipment Manufacturing	500
336322	Other Motor Vehicle Electrical and Electronic Equipment Manufacturing	750
336330	Motor Vehicle Steering and Suspension Components (except Spring) Manufacturing	750
336340	Motor Vehicle Brake System Manufacturing	750
336350	Motor Vehicle Transmission and Power Train Parts Manufacturing	750
336360	Motor Vehicle Seating and Interior Trim Manufacturing	500
336370	Motor Vehicle Metal Stamping	500
336391	Motor Vehicle Air-Conditioning Manufacturing	750
336399	All Other Motor Vehicle Parts Manufacturing	750
336411	Aircraft Manufacturing	1,500
336412	Aircraft Engine and Engine Parts Manufacturing	1,000
336413	Other Aircraft Part and Auxiliary Equipment Manufacturing	[7] 1,000
336414	Guided Missile and Space Vehicle Manufacturing	1,000
336415	Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Parts Manufacturing	1,000
336419	Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing	1,000
336510	Railroad Rolling Stock Manufacturing	1,000
336611	Ship Building and Repairing	1,000

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS Codes	Description (N.E.C. = Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
336612	Boat Building	500
336991	Motorcycle, Bicycle and Parts Manufacturing	500
336992	Military Armored Vehicle, Tank and Tank Component Manufacturing	1,000
336999	All Other Transportation Equipment Manufacturing	500
	Subsector 337—Furniture and Related Product Manufacturing	
337110	Wood Kitchen Cabinet and Counter Top Manufacturing	500
337121	Upholstered Household Furniture Manufacturing	500
337122	Nonupholstered Wood Household Furniture Manufacturing	500
337124	Metal Household Furniture Manufacturing	500
337125	Household Furniture (except Wood and Metal) Manufacturing	500
337127	Institutional Furniture Manufacturing	500
337129	Wood Television, Radio, and Sewing Machine Cabinet Manufacturing	500
337211	Wood Office Furniture Manufacturing	500
337212	Custom Architectural Woodwork and Millwork Manufacturing	500
337214	Office Furniture (Except Wood) Manufacturing	500
337215	Showcase, Partition, Shelving, and Locker Manufacturing	500
337910	Mattress Manufacturing	500
337920	Blind and Shade Manufacturing	500
	Subsector 339—Miscellaneous Manufacturing	
339111	Laboratory Apparatus and Furniture Manufacturing	500
339112	Surgical and Medical Instrument Manufacturing	500
339113	Surgical Appliance and Supplies Manufacturing	500
339114	Dental Equipment and Supplies Manufacturing	500
339115	Ophthalmic Goods Manufacturing	500
339116	Dental Laboratories	500
339911	Jewelry (except Costume) Manufacturing	500
339912	Silverware and Plated Ware Manufacturing	500
339913	Jewelers' Material and Lapidary Work Manufacturing	500
339914	Costume Jewelry and Novelty Manufacturing	500
339920	Sporting and Athletic Goods Manufacturing	500
339931	Doll and Stuffed Toy Manufacturing	500
339932	Game, Toy, and Children's Vehicle Manufacturing	500
339941	Pen and Mechanical Pencil Manufacturing	500
339942	Lead Pencil and Art Good Manufacturing	500
339943	Marking Device Manufacturing	500
339944	Carbon Paper and Inked Ribbon Manufacturing	500
339950	Sign Manufacturing	500
339991	Gasket, Packing, and Sealing Device Manufacturing	500
339992	Musical Instrument Manufacturing	500
339993	Fastener, Button, Needle and Pin Manufacturing	500
339994	Broom, Brush and Mop Manufacturing	500
339995	Burial Casket Manufacturing	500
339999	All Other Miscellaneous Manufacturing	500
	Sector 42—Wholesale Trade (Not applicable to Government procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies.)	
	Subsector 421—Wholesale Trade—Durable Goods	
421110	Automobile and Other Motor Vehicle Wholesalers	100
421120	Motor Vehicle Supplies and New Part Wholesalers	100
421130	Tire and Tube Wholesalers	100
421140	Motor Vehicle Part (Used) Wholesalers	100
421210	Furniture Wholesalers	100
421220	Home Furnishing Wholesalers	100
421310	Lumber, Plywood, Millwork and Wood Panel Wholesalers	100
421320	Brick, Stone and Related Construction Material Wholesalers	100
421330	Roofing, Siding and Insulation Material Wholesalers	100
421390	Other Construction Material Wholesalers	100
421410	Photographic Equipment and Supplies Wholesalers	100
421420	Office Equipment Wholesalers	100
421430	Computer and Computer Peripheral Equipment and Software Wholesalers	100
421440	Other Commercial Equipment Wholesalers	100

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS Codes	Description (N.E.C. = Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
421450	Medical, Dental and Hospital Equipment and Supplies Wholesalers	100
421460	Ophthalmic Goods Wholesalers	100
421490	Other Professional Equipment and Supplies Wholesalers	100
421510	Metal Service Centers and Offices	100
421520	Coal and Other Mineral and Ore Wholesalers	100
421610	Electrical Apparatus and Equipment, Wiring Supplies and Construction Material Wholesalers	100
421620	Electrical Appliance, Television and Radio Set Wholesalers	100
421690	Other Electronic Parts and Equipment Wholesalers	100
421710	Hardware Wholesalers	100
421720	Plumbing and Heating Equipment and Supplies (Hydronics) Wholesalers	100
421730	Warm Air Heating and Air-Conditioning Equipment and Supplies Wholesalers	100
421740	Refrigeration Equipment and Supplies Wholesalers	100
421810	Construction and Mining (except Petroleum) Machinery and Equipment Wholesalers	100
421820	Farm and Garden Machinery and Equipment Wholesalers	100
421830	Industrial Machinery and Equipment Wholesalers	100
421840	Industrial Supplies Wholesalers	100
421850	Service Establishment Equipment and Supplies Wholesalers	100
421860	Transportation Equipment and Supplies (except Motor Vehicle) Wholesalers	100
421910	Sporting and Recreational Goods and Supplies Wholesalers	100
421920	Toy and Hobby Goods and Supplies Wholesalers	100
421930	Recyclable Material Wholesalers	100
421940	Jewelry, Watch, Precious Stone and Precious Metal Wholesalers	100
421990	Other Miscellaneous Durable Goods Wholesalers	100
	Subsector 422—Wholesale Trade—Nondurable Goods	
422110	Printing and Writing Paper Wholesalers	100
422120	Stationary and Office Supplies Wholesalers	100
422130	Industrial and Personal Service Paper Wholesalers	100
422210	Drugs and Druggists' Sundries Wholesalers	100
422310	Piece Goods, Notions and Other Dry Goods Wholesalers	100
422320	Men's and Boys' Clothing and Furnishings Wholesalers	100
422330	Women's, Children's, and Infants' Clothing and Accessories Wholesalers	100
422340	Footwear Wholesalers	100
422410	General Line Grocery Wholesalers	100
422420	Packaged Frozen Food Wholesalers	100
422430	Dairy Product (except Dried or Canned) Wholesalers	100
422440	Poultry and Poultry Product Wholesalers	100
422450	Confectionery Wholesalers	100
422460	Fish and Seafood Wholesalers	100
422470	Meat and Meat Product Wholesalers	100
422480	Fresh Fruit and Vegetable Wholesalers	100
422490	Other Grocery and Related Products Wholesalers	100
422510	Grain and Field Bean Wholesalers	100
422520	Livestock Wholesalers	100
422590	Other Farm Product Raw Material Wholesalers	100
422610	Plastics Materials and Basic Forms and Shapes Wholesalers	100
422690	Other Chemical and Allied Products Wholesalers	100
422710	Petroleum Bulk Stations and Terminals	100
422720	Petroleum and Petroleum Products Wholesalers (except Bulk Stations and Terminals)	100
422810	Beer and Ale Wholesalers	100
422820	Wine and Distilled Alcoholic Beverage Wholesalers	100
422910	Farm Supplies Wholesalers	100
422920	Book, Periodical and Newspaper Wholesalers	100
422930	Flower, Nursery Stock and Florists' Supplies Wholesalers	100
422940	Tobacco and Tobacco Product Wholesalers	100
422950	Paint, Varnish and Supplies Wholesalers	100
422990	Other Miscellaneous Nondurable Goods Wholesalers	100
	Sectors 44–45—Retail Trade	
	Subsector 441—Motor Vehicle and Parts Dealers	
441110	New Car Dealers	$21.0
441120	Used Car Dealers	$17.0
441210	Recreational Vehicle Dealers	$5.0
441221	Motorcycle Dealers	$5.0
441222	Boat Dealers	$5.0

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS Codes	Description (N.E.C. = Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
441229	All Other Motor Vehicle Dealers	$5.0
EXCEPT	Aircraft Dealers, Retail	$7.5
441310	Automotive Parts and Accessories Stores	$5.0
441320	Tire Dealers	$5.0
	Subsector 442—Furniture and Home Furnishings Stores	
442110	Furniture Stores	$5.0
442210	Floor Covering Stores	$5.0
442291	Window Treatment Stores	$5.0
442299	All Other Home Furnishings Stores	$5.0
	Subsector 443—Electronics and Appliance Stores	
443111	Household Appliance Stores	$6.5
443112	Radio, Television and Other Electronics Stores	$6.5
443120	Computer and Software Stores	$6.5
443130	Camera and Photographic Supplies Stores	$5.0
	Subsector 444—Building Material and Garden Equipment and Supplies Dealers	
444110	Home Centers	$5.0
444120	Paint and Wallpaper Stores	$5.0
444130	Hardware Stores	$5.0
444190	Other Building Material Dealers	$5.0
444210	Outdoor Power Equipment Stores	$5.0
444220	Nursery and Garden Centers	$5.0
	Subsector 445—Food and Beverage Stores	
445110	Supermarkets and Other Grocery (except Convenience) Stores	$20.0
445120	Convenience Stores	$20.0
445210	Meat Markets	$5.0
445220	Fish and Seafood Markets	$5.0
445230	Fruit and Vegetable Markets	$5.0
445291	Baked Goods Stores	$5.0
445292	Confectionery and Nut Stores	$5.0
445299	All Other Specialty Food Stores	$5.0
445310	Beer, Wine and Liquor Stores	$5.0
	Subsector 446—Health and Personal Care Stores	
446110	Pharmacies and Drug Stores	$5.0
446120	Cosmetics, Beauty Supplies and Perfume Stores	$5.0
446130	Optical Goods Stores	$5.0
446191	Food (Health) Supplement Stores	$5.0
446199	All Other Health and Personal Care Stores	$5.0
	Subsector 447—Gasoline Stations	
447110	Gasoline Stations with Convenience Stores	$20.0
447190	Other Gasoline Stations	$6.5
	Subsector 448—Clothing and Clothing Accessories Stores	
448110	Men's Clothing Stores	$6.5
448120	Women's Clothing Stores	$6.5
448130	Children's and Infants' Clothing Stores	$5.0
448140	Family Clothing Stores	$6.5
448150	Clothing Accessories Stores	$5.0
448190	Other Clothing Stores	$5.0
448210	Shoe Stores	$6.5
448310	Jewelry Stores	$5.0
448320	Luggage and Leather Goods Stores	$5.0
	Subsector 451—Sporting Good, Hobby, Book and Music Stores	
451110	Sporting Goods Stores	$5.0

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS Codes	Description (N.E.C. = Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
451120	Hobby, Toy and Game Stores	$5.0
451130	Sewing, Needlework and Piece Goods Stores	$5.0
451140	Musical Instrument and Supplies Stores	$5.0
451211	Book Stores	$5.0
451212	News Dealers and Newsstands	$5.0
451220	Prerecorded Tape, Compact Disc and Record Stores	$5.0
	Subsector 452—General Merchandise Stores	
452110	Department Stores	$20.0
452910	Warehouse Clubs and Superstores	$20.0
452990	All Other General Merchandise Stores	$8.0
	Subsector 453—Miscellaneous Store Retailers	
453110	Florists	$5.0
453210	Office Supplies and Stationery Stores	$5.0
453220	Gift, Novelty and Souvenir Stores	$5.0
453310	Used Merchandise Stores	$5.0
453910	Pet and Pet Supplies Stores	$5.0
453920	Art Dealers	$5.0
453930	Manufactured (Mobile) Home Dealers	$9.5
453991	Tobacco Stores	$5.0
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores)	$5.0
454110	Electronic Shopping and Mail-Order Houses	$18.5
454210	Vending Machine Operators	$5.0
454311	Heating Oil Dealers	$9.0
454312	Liquefied Petroleum Gas (Bottled Gas) Dealers	$5.0
454319	Other Fuel Dealers	$5.0
454390	Other Direct Selling Establishments	$5.0
	Sectors 48–49—Transportation	
	Subsector 481—Air Transportation	
481111	Scheduled Passenger Air Transportation	1,500
481112	Scheduled Freight Air Transportation	1,500
481211	Nonscheduled Chartered Passenger Air Transportation	1,500
EXCEPT	Offshore Marine Air Transportation Services	$20.0
481212	Nonscheduled Chartered Freight Air Transportation	1,500
EXCEPT	Except Offshore Marine Air Transportation Services	$20.0
481219	Other Nonscheduled Air Transportation	$5.0
	Subsector 482—Rail Transportation	
482111	Line-Haul Railroads	500
482112	Short Line Railroads	500
	Subsector 483—Water Transportation	
483111	Deep Sea Freight Transportation	500
483112	Deep Sea Passenger Transportation	500
483113	Coastal and Great Lakes Freight Transportation	500
483114	Coastal and Great Lakes Passenger Transportation	500
483211	Inland Water Freight Transportation	500
483212	Inland Water Passenger Transportation	500
	Subsector 484—Truck Transportation	
484110	General Freight Trucking, Local	$18.5
484121	General Freight Trucking, Long-Distance, Truckload	$18.5
484122	General Freight Trucking, Long-Distance, Less Than Truckload	$18.5
484210	Used Household and Office Goods Moving	$18.5
484220	Specialized Freight (except Used Goods) Trucking, Local	$18.5
484230	Specialized Freight (except Used Goods) Trucking, Long-Distance	$18.5
	Subsector 485—Transit and Ground Passenger Transportation	
485110	Mixed Mode Transit Systems	$5.0

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS Codes	Description (N.E.C. = Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
485112	Commuter Rail Systems	$5.0
485113	Bus and Motor Vehicle Transit Systems	$5.0
485119	Other Urban Transit Systems	$5.0
485210	Interurban and Rural Bus Transportation	$5.0
485310	Taxi Service	$5.0
485320	Limousine Service	$5.0
485410	School and Employee Bus Transportation	$5.0
485510	Charter Bus Industry	$5.0
485991	Special Needs Transportation	$5.0
485999	All Other Transit and Ground Passenger Transportation	$5.0
	Subsector 486—Pipeline Transportation	
486110	Pipeline Transportation of Crude Oil	1,500
486210	Pipeline Transportation of Natural Gas	$5.0
486910	Pipeline Transportation of Refined Petroleum Products	1,500
486990	All Other Pipeline Transportation	$25.0
	Subsector 487—Scenic and Sightseeing Transportation	
487110	Scenic and Sightseeing Transportation, Land	$5.0
487210	Scenic and Sightseeing Transportation, Water	$5.0
487990	Scenic and Sightseeing Transportation, Other	$5.0
	Subsector 488—Support Activities for Transportation	
488111	Air Traffic Control	$5.0
488119	Other Airport Operations	$5.0
488190	Other Support Activities for Air Transportation	$5.0
488210	Support Activities for Rail Transportation	$5.0
488310	Port and Harbor Operations	$18.5
488320	Marine Cargo Handling	$18.5
488330	Navigational Services to Shipping	$5.0
488390	Other Support Activities for Water Transportation	$5.0
488410	Motor Vehicle Towing	$5.0
488490	Other Support Activities for Road Transportation	$5.0
488510	Freight Transportation Arrangement	$18.5
488991	Packing and Crating	$18.5
488999	All Other Support Activities for Transportation	$5.0
	Subsector 491—Postal Service	
491110	Postal Service	$5.0
	Subsector 492—Couriers and Messengers	
492110	Couriers	1,500
492210	Local Messengers and Local Delivery	$18.5
	Subsector 493—Warehousing and Storage	
493110	General Warehousing and Storage	$18.5
493120	Refrigerated Warehousing and Storage	$18.5
493130	Farm Product Warehousing and Storage	$18.5
493190	Other Warehousing and Storage	$18.5
	Sector 51—Information	
	Subsector 511—Publishing Industries	
511110	Newspaper Publishers	500
511120	Periodical Publishers	500
511130	Book Publishers	500
511140	Database and Directory Publishers	500
511191	Greeting Card Publishers	500
511199	All Other Publishers	500
511210	Software Publishers	$18.0

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS Codes	Description (N.E.C. = Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
	Subsector 512—Motion Picture and Sound Recording Industries	
512110	Motion Picture and Video Production	$21.5
512120	Motion Picture and Video Distribution	$21.5
512131	Motion Picture Theaters (except Drive-Ins)	$5.0
512132	Drive-In Motion Picture Theaters	$5.0
512191	Teleproduction and Other Post-Production Services	$21.5
512199	Other Motion Picture and Video Industries	$5.0
512210	Record Production	$5.0
512220	Integrated Record Production/Distribution	750
512230	Music Publishers	500
512240	Sound Recording Studios	$5.0
512290	Other Sound Recording Industries	$5.0
	Subsector 513—Broadcasting and Telecommunications	
513111	Radio Networks	$5.0
513112	Radio Stations	$5.0
513120	Television Broadcasting	$10.5
513210	Cable Networks	$11.0
513220	Cable and Other Program Distribution	$11.0
513310	Wired Telecommunications Carriers	1,500
513321	Paging	1,500
513322	Cellular and Other Wireless Telecommunications	1,500
513330	Telecommunications Resellers	1,500
513340	Satellite Telecommunications	$11.0
513390	Other Telecommunications	$11.0
	Subsector 514—Information Services and Data Processing Services	
514110	News Syndicates	$5.0
514120	Libraries and Archives	$5.0
514191	On-Line Information Services	$18.0
514199	All Other Information Services	$5.0
514210	Data Processing Services	$18.0
	Sector 52—Finance and Insurance	
	Subsector 522—Credit Intermediation and Related Activities	
522110	Commercial Banking	[8] $100 mil in assets
522120	Savings Institutions	[8] $100 mil in assets
522130	Credit Unions	[8] $100 mil in assets
522190	Other Depository Credit Intermediation	[8] $100 mil in assets
522210	Credit Card Issuing	[8] $100 mil in assets
522220	Sales Financing	$5.0
522291	Consumer Lending	$5.0
522292	Real Estate Credit	$5.0
522293	International Trade Financing	[8] $100 mil in assets
522294	Secondary Market Financing	$5.0
522298	All Other Non-Depository Credit Intermediation	$5.0
522310	Mortgage and Nonmortgage Loan Brokers	$5.0
522320	Financial Transactions Processing, Reserve, and Clearing House Activities	$5.0
522390	Other Activities Related to Credit Intermediation	$5.0
	Subsector 523—Financial Investments and Related Activities	
523110	Investment Banking and Securities Dealing	$5.0
523120	Securities Brokerage	$5.0
523130	Commodity Contracts Dealing	$5.0
523140	Commodity Contracts Brokerage	$5.0
523210	Securities and Commodity Exchanges	$5.0

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS Codes	Description (N.E.C. = Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
523910	Miscellaneous Intermediation	$5.0
523920	Portfolio Management	$5.0
523930	Investment Advice	$5.0
523991	Trust, Fiduciary and Custody Activities	$5.0
523999	Miscellaneous Financial Investment Activities	$5.0
	Subsector 524—Insurance Carriers and Related Activities	
524113	Direct Life Insurance Carriers	$5.0
524114	Direct Health and Medical Insurance Carriers	$5.0
524126	Direct Property and Casualty Insurance Carriers	1,500
524127	Direct Title Insurance Carriers	$5.0
524128	Other Direct Insurance (except Life, Health and Medical) Carriers	$5.0
524130	Reinsurance Carriers	$5.0
524210	Insurance Agencies and Brokerages	$5.0
524291	Claims Adjusting	$5.0
524292	Third Party Administration of Insurance and Pension Funds	$5.0
524298	All Other Insurance Related Activities	$5.0
	Subsector 525—Funds, Trusts and Other Financial Vehicles	
525110	Pension Funds	$5.0
525120	Health and Welfare Funds	$5.0
525190	Other Insurance Funds	$5.0
525910	Open-End Investment Funds	$5.0
525920	Trusts, Estates, and Agency Accounts	$5.0
525930	Real Estate Investment Trusts	$5.0
525990	Other Financial Vehicles	$5.0
	Sector 53—Real Estate and Rental and Leasing	
	Subsector 531—Real Estate	
531110	Lessors of Residential Buildings and Dwellings	$5.0
531120	Lessors of Nonresidential Buildings (except Miniwarehouses)	$5.0
531130	Lessors of Miniwarehouses and Self Storage Units	$18.5
531190	Lessors of Other Real Estate Property	$5.0
EXCEPT	Leasing of Building Space to Federal Government by Owners	[9] $15.0
531210	Offices of Real Estate Agents and Brokers	[10] $1.5
531311	Residential Property Managers	[10] $1.5
531312	Nonresidential Property Managers	[10] $1.5
531320	Offices of Real Estate Appraisers	$1.5
531390	Other Activities Related to Real Estate	[10] $1.5
	Subsector 532—Rental and Leasing Services	
532111	Passenger Car Rental	$18.5
532112	Passenger Car Leasing	$18.5
532120	Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing	$18.5
532210	Consumer Electronics and Appliances Rental	$5.0
532220	Formal Wear and Costume Rental	$5.0
532230	Video Tape and Disc Rental	$5.0
532291	Home Health Equipment Rental	$5.0
532292	Recreational Goods Rental	$5.0
532299	All Other Consumer Goods Rental	$5.0
532310	General Rental Centers	$5.0
532411	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing	$5.0
532412	Construction, Mining and Forestry Machinery and Equipment Rental and Leasing	$5.0
532420	Office Machinery and Equipment Rental and Leasing	$18.0
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing	$5.0
	Subsector 533—Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	
533110	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	$5.0

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS Codes	Description (N.E.C. = Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
	Sector 54 — Professional, Scientific and Technical Services	
	Subsector 541 — Professional, Scientific and Technical Services	
541110	Offices of Lawyers	$5.0
541191	Title Abstract and Settlement Offices	$5.0
541199	All Other Legal Services	$5.0
541211	Offices of Certified Public Accountants	$6.0
541213	Tax Preparation Services	$5.0
541214	Payroll Services	$6.0
541219	Other Accounting Services	$6.0
541310	Architectural Services	$4.0
541320	Landscape Architectural Services	$5.0
541330	Engineering Services	$4.0
EXCEPT	Military and Aerospace Equipment and Military Weapons	$20.0
EXCEPT	Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992	$20.0
EXCEPT	Marine Engineering and Naval Architecture	$13.5
541340	Drafting Services	$5.0
EXCEPT	Map Drafting	$4.0
541350	Building Inspection Services	$5.0
541360	Geophysical Surveying and Mapping Services	$4.0
541370	Surveying and Mapping (except Geophysical) Services	$4.0
EXCEPT	Mapmaking	$4.0
541380	Testing Laboratories	$5.0
541410	Interior Design Services	$5.0
541420	Industrial Design Services	$5.0
541430	Graphic Design Services	$5.0
541490	Other Specialized Design Services	$5.0
541511	Custom Computer Programming Services	$18.0
541512	Computer Systems Design Services	$18.0
541513	Computer Facilities Management Services	$18.0
541519	Other Computer Related Services	$18.0
541611	Administrative Management and General Management Consulting Services	$5.0
541612	Human Resources and Executive Search Consulting Services	$5.0
541613	Marketing Consulting Services	$5.0
541614	Process, Physical Distribution and Logistics Consulting Services	$5.0
541618	Other Management Consulting Services	$5.0
541620	Environmental Consulting Services	$5.0
541690	Other Scientific and Technical Consulting Services	$5.0
541710	Research and Development in the Physical, Engineering, and Life Sciences	[11] 500
EXCEPT	Aircraft	1,500
EXCEPT	Aircraft Parts, and Auxiliary Equipment, and Aircraft Engine Parts	1,000
EXCEPT	Space Vehicles and Guided Missiles, their Propulsion Units, their Propulsion Units Parts, and their Auxiliary Equipment and Parts	1,000
541720	Research and Development in the Social Sciences and Humanities	$5.0
541810	Advertising Agencies	[10] $5.0
541820	Public Relations Agencies	$5.0
541830	Media Buying Agencies	$5.0
541840	Media Representatives	$5.0
541850	Display Advertising	$5.0
541860	Direct Mail Advertising	$5.0
541870	Advertising Material Distribution Services	$5.0
541890	Other Services Related to Advertising	$5.0
541910	Marketing Research and Public Opinion Polling	$5.0
541921	Photography Studios, Portrait	$5.0
541922	Commercial Photography	$5.0
541930	Translation and Interpretation Services	$5.0
541940	Veterinary Services	$5.0
541990	All Other Professional, Scientific and Technical Services	$5.0
	Sector 55 — Management of Companies and Enterprises	
	Subsector 551 — Management of Companies and Enterprises	
551111	Offices of Bank Holding Companies	$5.0
551112	Offices of Other Holding Companies	$5.0

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS Codes	Description (N.E.C. = Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
	Sector 56 — Administrative and Support, Waste Management and Remediation Services	
	Subsector 561 — Administrative and Support Services	
561110	Office Administrative Services	$5.0
561210	Facilities Support Services [12]	[12] $5.0
EXCEPT	Base Maintenance [13]	[13] $20.0
561310	Employment Placement Agencies	$5.0
561320	Temporary Help Services	$5.0
561330	Employee Leasing Services	$5.0
561410	Document Preparation Services	$5.0
561421	Telephone Answering Services	$5.0
561422	Telemarketing Bureaus	$5.0
561431	Private Mail Centers	$5.0
561439	Other Business Service Centers (including Copy Shops)	$5.0
561440	Collection Agencies	$5.0
561450	Credit Bureaus	$5.0
561491	Repossession Services	$5.0
561492	Court Reporting and Stenotype Services	$5.0
561499	All Other Business Support Services	$5.0
561510	Travel Agencies	[10] $1.0
561520	Tour Operators	$5.0
561591	Convention and Visitors Bureaus	$5.0
561599	All Other Travel Arrangement and Reservation Services	$5.0
561611	Investigation Services	$9.0
561612	Security Guards and Patrol Services	$9.0
561613	Armored Car Services	$9.0
561621	Security Systems Services (except Locksmiths)	$9.0
561622	Locksmiths	$5.0
561710	Exterminating and Pest Control Services	$5.0
561720	Janitorial Services	$12.0
561730	Landscaping Services	$5.0
561740	Carpet and Upholstery Cleaning Services	$3.5
561790	Other Services to Buildings and Dwellings	$5.0
561910	Packaging and Labeling Services	$5.0
561920	Convention and Trade Show Organizers	[10] $5.0
561990	All Other Support Services	$5.0
562111	Solid Waste Collection	$6.0
	Subsector 562 — Waste Management and Remediation Services	
562112	Hazardous Waste Collection	$6.0
562119	Other Waste Collection	$6.0
562211	Hazardous Waste Treatment and Disposal	$6.0
562212	Solid Waste Landfill	$6.0
562213	Solid Waste Combustors and Incinerators	$6.0
562219	Other Nonhazardous Waste Treatment and Disposal	$6.0
562910	Remediation Services	$7.0
EXCEPT	Environmental Remediation Services	[14] 500
562920	Materials Recovery Facilities	$6.0
562991	Septic Tank and Related Services	$5.0
562998	All Other Miscellaneous Waste Management Services	$5.0
	Sector 61 — Educational Services	
	Subsector 611 — Educational Services	
611110	Elementary and Secondary Schools	$5.0
611210	Junior Colleges	$5.0
611310	Colleges, Universities and Professional Schools	$5.0
611410	Business and Secretarial Schools	$5.0
611420	Computer Training	$5.0
611430	Professional and Management Development Training	$5.0
611511	Cosmetology and Barber Schools	$5.0
611512	Flight Training	$18.5
611513	Apprenticeship Training	$5.0
611519	Other Technical and Trade Schools	$5.0
611610	Fine Arts Schools	$5.0

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS Codes	Description (N.E.C. = Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
611620	Sports and Recreation Instruction	$5.0
611630	Language Schools	$5.0
611691	Exam Preparation and Tutoring	$5.0
611692	Automobile Driving Schools	$5.0
611699	All Other Miscellaneous Schools and Instruction	$5.0
611710	Educational Support Services	$5.0
	Sector 62—Health Care and Social Assistance	
	Subsector 621—Ambulatory Health Care Services	
621111	Offices of Physicians (except Mental Health Specialists)	$5.0
621112	Offices of Physicians, Mental Health Specialists	$5.0
621210	Offices of Dentists	$5.0
621310	Offices of Chiropractors	$5.0
621320	Offices of Optometrists	$5.0
621330	Offices of Mental Health Practitioners (except Physicians)	$5.0
621340	Offices of Physical, Occupational and Speech Therapists and Audiologists	$5.0
621391	Offices of Podiatrists	$5.0
621399	Offices of All Other Miscellaneous Health Practitioners	$5.0
621410	Family Planning Centers	$5.0
621420	Outpatient Mental Health and Substance Abuse Centers	$5.0
621491	HMO Medical Centers	$5.0
621492	Kidney Dialysis Centers	$5.0
621493	Freestanding Ambulatory Surgical and Emergency Centers	$5.0
621498	All Other Outpatient Care Centers	$5.0
621511	Medical Laboratories	$5.0
621512	Diagnostic Imaging Centers	$5.0
621610	Home Health Care Services	$5.0
621910	Ambulance Services	$5.0
621991	Blood and Organ Banks	$5.0
621999	All Other Miscellaneous Ambulatory Health Care Services	$5.0
	Subsector 622—Hospitals	
622110	General Medical and Surgical Hospitals	$5.0
622210	Psychiatric and Substance Abuse Hospitals	$5.0
622310	Specialty (except Psychiatric and Substance Abuse) Hospitals	$5.0
	Subsector 623—Nursing and Residential Care Facilities	
623110	Nursing Care Facilities	$5.0
623210	Residential Mental Retardation Facilities	$5.0
623220	Residential Mental Health and Substance Abuse Facilities	$5.0
623311	Continuing Care Retirement Communities	$5.0
623312	Homes for the Elderly	$5.0
623990	Other Residential Care Facilities	$5.0
	Subsector 624—Social Assistance	
624110	Child and Youth Services	$5.0
624120	Services for the Elderly and Persons with Disabilities	$5.0
624190	Other Individual and Family Services	$5.0
624210	Community Food Services	$5.0
624221	Temporary Shelters	$5.0
624229	Other Community Housing Services	$5.0
624230	Emergency and Other Relief Services	$5.0
624310	Vocational Rehabilitation Services	$5.0
624410	Child Day Care Services	$5.0
	Sector 71—Arts, Entertainment and Recreation	
	Subsector 711—Performing Arts, Spectator Sports and Related Industries	
711110	Theater Companies and Dinner Theaters	$5.0
711120	Dance Companies	$5.0
711130	Musical Groups and Artists	$5.0
711190	Other Performing Arts Companies	$5.0

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS Codes	Description (N.E.C. = Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
711211	Sports Teams and Clubs	$5.0
711212	Race Tracks	$5.0
711219	Other Spectator Sports	$5.0
711310	Promoters of Performing Arts, Sports and Similar Events with Facilities	$5.0
711320	Promoters of Performing Arts, Sports and Similar Events without Facilities	$5.0
711410	Agents and Managers for Artists, Athletes, Entertainers and Other Public Figures	$5.0
711510	Independent Artists, Writers, and Performers	$5.0
	Subsector 712—Museums, Historical Sites and Similar Institutions	
712110	Museums	$5.0
712120	Historical Sites	$5.0
712130	Zoos and Botanical Gardens	$5.0
712190	Nature Parks and Other Similar Institutions	$5.0
	Subsector 713—Amusement, Gambling and Recreation Industries	
713110	Amusement and Theme Parks	$5.0
713120	Amusement Arcades	$5.0
713210	Casinos (except Casino Hotels)	$5.0
713290	Other Gambling Industries	$5.0
713910	Golf Courses and Country Clubs	$5.0
713920	Skiing Facilities	$5.0
713930	Marinas	$5.0
713940	Fitness and Recreational Sports Centers	$5.0
713950	Bowling Centers	$5.0
713990	All Other Amusement and Recreation Industries	$5.0
	Sector 72—Accommodation and Food Services	
	Subsector 721—Accommodation	
721110	Hotels (except Casino Hotels) and Motels	$5.0
721120	Casino Hotels	$5.0
721191	Bed and Breakfast Inns	$5.0
721199	All Other Traveler Accommodation	$5.0
721211	RV (Recreational Vehicle) Parks and Campgrounds	$5.0
721214	Recreational and Vacation Camps (except Campgrounds)	$5.0
721310	Rooming and Boarding Houses	$5.0
	Subsector 722—Food Services and Drinking Places	
722110	Full-Service Restaurants	$5.0
722211	Limited-Service Restaurants	$5.0
722212	Cafeterias	$5.0
722213	Snack and Nonalcoholic Beverage Bars	$5.0
722310	Food Service Contractors	$15.0
722320	Caterers	$5.0
722330	Mobile Food Services	$5.0
722410	Drinking Places (Alcoholic Beverages)	$5.0
	Sector 81—Other Services	
	Subsector 811—Repair and Maintenance	
811111	General Automotive Repair	$5.0
811112	Automotive Exhaust System Repair	$5.0
811113	Automotive Transmission Repair	$5.0
811118	Other Automotive Mechanical and Electrical Repair and Maintenance	$5.0
811121	Automotive Body, Paint and Interior Repair and Maintenance	$5.0
811122	Automotive Glass Replacement Shops	$5.0
811191	Automotive Oil Change and Lubrication Shops	$5.0
811192	Car Washes	$5.0
811198	All Other Automotive Repair and Maintenance	$5.0
811211	Consumer Electronics Repair and Maintenance	$5.0
811212	Computer and Office Machine Repair and Maintenance	$18.0
811213	Communication Equipment Repair and Maintenance	$5.0
811219	Other Electronic and Precision Equipment Repair and Maintenance	$5.0

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS Codes	Description (N.E.C. = Not Elsewhere Classified)	Size standard in number of employees or millions of dollars
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	$5.0
811411	Home and Garden Equipment Repair and Maintenance	$5.0
811412	Appliance Repair and Maintenance	$5.0
811420	Reupholstery and Furniture Repair	$5.0
811430	Footwear and Leather Goods Repair	$5.0
811490	Other Personal and Household Goods Repair and Maintenance	$5.0
Subsector 812—Personal and Laundry Services		
812111	Barber Shops	$5.0
812112	Beauty Salons	$5.0
812113	Nail Salons	$5.0
812191	Diet and Weight Reducing Centers	$5.0
812199	Other Personal Care Services	$5.0
812210	Funeral Homes and Funeral Services	$5.0
812220	Cemeteries and Crematories	$5.0
812310	Coin-Operated Laundries and Drycleaners	$5.0
812320	Drycleaning and Laundry Services (except Coin-Operated)	$3.5
812331	Linen Supply	$10.5
812332	Industrial Launderers	$10.5
812391	Garment Pressing, and Agents for Laundries	$5.0
812399	All Other Laundry Services	$5.0
812910	Pet Care (except Veterinary) Services	$5.0
812921	Photo Finishing Laboratories (except One-Hour)	$5.0
812922	One-Hour Photo Finishing	$5.0
812930	Parking Lots and Garages	$5.0
812990	All Other Personal Services	$5.0
Subsector 813—Religious, Grantmaking, Civic, Professional and Similar Organizations		
813110	Religious Organizations	$5.0
813211	Grantmaking Foundations	$5.0
813212	Voluntary Health Organizations	$5.0
813219	Other Grantmaking and Giving Services	$5.0
813311	Human Rights Organizations	$5.0
813312	Environment, Conservation and Wildlife Organizations	$5.0
813319	Other Social Advocacy Organizations	$5.0
813410	Civic and Social Organizations	$5.0
813910	Business Associations	$5.0
813920	Professional Organizations	$5.0
813930	Labor Unions and Similar Labor Organizations	$5.0
813940	Political Organizations	$5.0
813990	Other Similar Organizations (except Business, Professional, Labor, and Political Organizations)	$5.0

Footnotes

[As noted at the head of the table in the Supplementary Information above, the following footnotes relate only to SBA's proposed size standards. Footnotes to existing size standards follow the table of size standards in the Supplementary Information above.]

1. *NAICS codes 221111, 221112, 221113, 221119, 221121, 221122*—A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.

2. *NAICS code 23499*—Dredging: To be considered small for purposes of Government procurement, a firm must perform at least 40 percent of the volume dredged with its own equipment or equipment owned by another small dredging concern.

3. *NAICS code 311421*—For purposes of Government procurement for food canning and preserving, the standard of 500 employees excludes agricultural labor as defined in 3306(k) of the Internal Revenue Code, 26 U.S.C. 3306(k).

4. *NAICS code 32411*—For purposes of Government procurement, the firm may not have more than 1,500 employees nor more than 75,000 barrels per day capacity of petroleum-based inputs, including crude oil or bona fide feedstocks. Capacity includes owned or leased facilities as well as facilities under a processing agreement or an arrangement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

5. *NAICS code 326211*—For Government procurement, a firm is small for bidding on a contract for pneumatic tires within Census Classification codes 30111 and 30112, provided that:

(a) The value of tires within Census Classification codes 30111 and 30112 which it manufactured in the United States during the previous calendar year is more than 50 percent of the value of its total worldwide manufacture,

(b) the value of pneumatic tires within Census Classification codes 30111 and 30112 comprising its total worldwide manufacture during the preceding calendar year was less than 5 percent of the value of all such tires manufactured in the United States during that period, and

(c) the value of the principal product which it manufactured or otherwise produced, or sold worldwide during the

preceding calendar year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during that period.

6. *NAICS Subsectors 333, 334, 335 and 336*—For rebuilding machinery or equipment on a factory basis, or equivalent, use the NAICS code for a newly manufactured product. Concerns performing major rebuilding or overhaul activities do not necessarily have to meet the criteria for being a ''manufacturer'' although the activities may be classified under a manufacturing NAICS code. Ordinary repair services or preservation are not considered rebuilding.

7. *NAICS code 336413*—Contracts for the rebuilding or overhaul of aircraft ground support equipment on a contract basis are classified under NAICS code 336413.

8. *NAICS Codes 52211, 52212, 52213, 52219, 52221 and 52293*—A financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year. ''Assets'' for the purposes of this size standard means the assets defined according to the Federal Financial Institutions Examination Council 034 call report form.

9. *NAICS code 53119*—Leasing of building space to the Federal Government by Owners: For Government procurement, a size standard of $15.0 million in gross receipts applies to the owners of building space leased to the Federal Government. The standard does not apply to an agent.

10. *NAICS codes 53121, 531311, 531312, 53139, 54181, 56151, 56192*—As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue.

11. *NAICS code 54171*—For research and development contracts requiring the delivery of a manufactured product, the appropriate size standard is that of the manufacturing industry.

(a) ''Research and Development'' means laboratory or other physical research and development. It does not include economic, educational, engineering, operations, systems, or other nonphysical research; or computer programming, data processing, commercial and/or medical laboratory testing.

(b) For purposes of the Small Business Innovation Research (SBIR) program only, a different definition has been established by law. See § 121.701 of these regulations.

(c) ''Research and Development'' for guided missiles and space vehicles includes evaluations and simulation, and other services requiring thorough knowledge of complete missiles and spacecraft.

12. *NAICS code 56121*—Facilities Support Services, a component of NAICS 56121, includes establishments, not classified elsewhere, which provide overall management and personnel to perform a variety of related support services in operating a complete facility in or around a specific building, or within another business or Government establishment. Facilities management means furnishing three or more personnel supply services which may include, but are not limited to secretarial services, typists, word processing, maintaining files and/or libraries, telephone answering, switchboard operation, reproduction or mimeograph service, mailing service, writers, bookkeeping, financial or business management, public relations, conference planning, minor office equipment maintenance and repair, use of information systems (not programming), word processing, travel arrangements, maintaining files and/or libraries.

13. *Subsector 235 (Special Trade Contractors), NAICS code 23599 (All Other Special Trade Contractors), and NAICS code 56121 (Facilities Support Services)*—Base Maintenance:

(a) If one of the activities of base maintenance, as defined in paragraph b) (below in this endnote) can be identified with a separate industry and that activity (or industry) accounts for 50 percent or more of the value of an entire contract, then the proper size standard is that of the particular industry, and not the base maintenance size standard.

(b) ''Base Maintenance'' requires the performance of three or more separate activities in the areas of service or special trade construction industries. If services are performed, these activities must each be in a separate NAICS code including, but not limited to, Janitorial and Custodial Service, Fire Prevention Service, Messenger Service, Commissary Service, Protective Guard Service, and Grounds Maintenance and Landscaping Service. If the contract requires the use of special trade contractors (plumbing, painting, plastering, carpentry, etc.), all such special trade construction activities are considered a single activity and classified as Base Housing Maintenance. Since Base Housing Maintenance is only one activity, two additional activities are required for a contract to be classified as ''Base Maintenance.''

14. *NAICS 56291*—Environmental Remediation Services:

(a) For SBA assistance as a small business concern in the industry of Environmental Remediation Services, other than for Government procurement, a concern must be engaged primarily in furnishing a range of services for the remediation of a contaminated environment to an acceptable condition including, but not limited to, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, containment, remedial action, removal of contaminated materials, storage of contaminated materials and security and site closeouts. If one of such activities accounts for 50 percent or more of a concern's total revenues, employees, or other related factors, the concern's primary industry is that of the particular industry and not the Environmental Remediation Services Industry.

(b) For purposes of classifying a Government procurement as Environmental Remediation Services, the general purpose of the procurement must be to restore a contaminated environment and also the procurement must be composed of activities in three or more separate industries with separate NAICS codes or, in some instances (*e.g.*, engineering), smaller sub-components of NAICS codes with separate, distinct size standards. These activities may include, but are not limited to, separate activities in industries such as: Heavy Construction; Special Trade Construction; Engineering Services; Architectural Services; Management Services; Refuse Systems; Sanitary Services, Not Elsewhere Classified; Local Trucking Without Storage; Testing Laboratories; and Commercial, Physical and Biological Research. If any activity in the procurement can be identified with a separate NAICS code, or component of a code with a separate distinct size standard, and that industry accounts for 50 percent or more of the value of the entire procurement, then the proper size standard is the one for that particular industry, and not the Environmental Remediation Service size standard.

§ 121.402 [Amended]

4. Amend § 121.402 as follows:

a. In paragraph (a) and (d) replace the acronym ''SIC'' with the acronym ''NAICS''.

b. In paragraph (b) replace all ''SIC'' acronyms with ''NAICS'' and in the second sentence, add ''United States'' after the first NAICS acronym.

c. In paragraph (c) replace all ''SIC'' acronyms with the acronym ''NAICS'' and replace the word ''a'' before the second NAICS acronym with the word ''an''.

d. In paragraph (e) replace the words ''a SIC'' with ''an NAICS''.

§ 121.403 [Amended]

5. In § 121.403, replace the acronym ''SIC'' in the heading and the first sentence with the acronym ''NAICS''.

§ 121.406 [Amended]

6. In paragraph (c)(1) of § 121.406, replace the acronym ''SIC'' with the acronym ''NAICS''.

§ 121.409 [Amended]

7. In § 121.409, replace the acronym ''SIC'' with the acronym ''NAICS''.

§ 121.410 [Amended]

8. In the last sentence of paragraph (a) of § 121.410, remove the phrase ''SIC code 8711'' and replace it with ''NAICS code 54133''.

§ 121.603 [Amended]

9. In paragraph (a) of § 121.603, replace the acronym ''SIC'' with the acronym ''NAICS''.

§ 121.1102 [Amended]

10. In § 121.1102, replace the acronym ''SIC'' in the heading and the text with the acronym ''NAICS''.

§ 121.1103 [Amended]

11. Amend § 121.1103 as follows:

a. In the heading and the first sentence of paragraph (a), replace the phrase ''a SIC'' with ''an NAICS''.

b. In paragraph (b), replace the acronym ''SIC'' with the acronym ''NAICS''.

§ 121.1202 [Amended]

12. In paragraph (d) § 121.1202, replace the phrase ''a four-digit'' with ''an NAICS'' and replace the acronym ''SIC'' with ''NAICS''.

§ 121.1204 [Amended]

13. In paragraphs (a)(3) and (b)(1)(ii) of § 121.1204, replace the acronym ''SIC'' with the acronym ''NAICS''.

Dated: July 30, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–25231 Filed 10–21–99; 8:45 am]

BILLING CODE 8025–01–P

federal register

Friday
October 22, 1999

Part III

Department of Education

34 CFR Part 614

Preparing Tomorrow's Teachers To Use Technology; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 614

RIN 1840–AC81

Preparing Tomorrow's Teachers to Use Technology

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes regulations for the Preparing Tomorrow's Teachers to Use Technology program, which provides grants to consortia that help future teachers become proficient in the use of modern learning technologies. This program provides support for two types of grants: Implementation grants and Catalyst grants.

DATES: We must receive your comments on or before November 22, 1999.

ADDRESSES: All comments concerning these proposed regulations should be addressed to: Mary Gonzales, US Department of Education, 1990 K Street, NW., Room 6153, Washington, DC 20006. Comments may also be sent through the Internet to: Teacher__Technology@ed.gov

You should include the term ''Regulations for Preparing Tomorrow's Teachers to Use Technology'' in the subject line of your electronic message.

If you want to comment on the information collection requirements in the application package associated with these regulations you must send your comments to the Office of Management and Budget (OMB) at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Mary Gonzales, Office of Postsecondary Education, 1990 K Street, NW., Room 6153, Washington, DC. 20006. Telephone: (202) 260–1365. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 401–3664.

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.

SUPPLEMENTARY INFORMATION:

Invitation to Comment:

We invite you to submit comments regarding these proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in Room 6153, 1990 K Street, NW., Washington, DC. 20006, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or printer magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Background

Teacher preparation is emerging as a critical factor limiting the contributions of new technologies to improved learning. Federal, State and local agencies are investing billions of dollars to equip schools with computers and modern communications networks. However, despite these investments, only 20 percent of the 2.5 million current public school teachers feel comfortable using technology in their classrooms.

The proposed regulations are necessary to focus available funds on projects that train teachers to become technology-proficient educators, who are well prepared to help all students meet high standards. Grants made under this program would assist teacher preparation programs that are integrating modern technologies into the curriculum to meet the nation's technology literacy challenge.

Section 614.1 of the proposed regulations would outline the purpose of the Preparing Tomorrow's Teachers to Use Technology program. Under § 614.1, the purpose of grants under this program would be to help future teachers to become proficient in the use of modern learning technologies. The proposed regulations would limit grants made under this program to support training for pre-service teachers. Section 614.1 would prohibit the use of grant funds for in-service training, or for continuing education for currently certified teachers. While we recognize that retraining currently certified teachers is an important objective, in less than a decade over two million teachers must be recruited to replace retiring teachers, to meet increasing student enrollment demands, and to achieve smaller class sizes. Therefore, we believe that an emphasis on training preservice teachers is the most effective way to use limited Federal funds.

Section 614.2 of the proposed regulations would define the eligible applicants for the program. Under § 614.2, an eligible applicant would be a consortium composed of at least two or more organizations that could include: institutions of higher education (IHEs), schools of education, community colleges, State educational agencies (SEAs), local educational agencies (LEAs), private elementary or secondary schools, professional associations, foundations, museums, libraries, private sector businesses, public or private nonprofit organizations, community-based organizations, or any other entity able to contribute to the teacher preparation program reforms that produce technology-proficient educators. Innovative ideas for training prospective teachers must enable applicants to draw upon the commitments and expertise of multiple organizational resources. We believe that requiring the formation of consortia will help promote improved teacher preparation within established institutions and foster more collaboration across disciplines and among higher education, elementary and secondary schools, and the private sector. Teacher preparation programs are strongly encouraged to form partnerships with technology-rich K–12 schools that can provide postsecondary faculty and prospective teachers with hands-on learning opportunities in well-equipped classrooms.

Section 614.3 of the proposed regulations would outline the regulations that would apply to this program. Section 614.3(a) would list the regulations from the Education Department's General Administrative Regulations that would apply to the program, and § 614.3(b) would reference these proposed regulations.

The proposed regulations in § 614.4 would require that the lead applicant for the consortium be a nonprofit member of the consortium, and that only the lead applicant could serve as the fiscal agent for the consortium, to best ensure accountability.

Section 614.5 of the proposed regulations would establish the matching requirements for consortia. The proposed regulations would require that the Federal share of the cost of the project could not be more than fifty percent of the total project cost for each budget period. This matching requirement will help ensure sustained community support, even after Federal grant money is gone. Requiring the consortia to provide some funding will allow more consortia and, therefore, more innovative strategies, to be funded.

Section 614.6 of the proposed regulations would limit the maximum indirect cost rate for all consortium partners and any cost-type contract made under these grants to eight percent of a modified total direct cost base or the partner's negotiated indirect cost rate, whichever rate is lower. Indirect costs are charges that are incurred by so many programs or cost objectives that it would be either impossible or prohibitively expensive to calculate the precise amount of charges allocable to a particular program or grant activity. Examples of typical indirect costs are heat, electricity and other utilities, building services and depreciation, and general administration.

Generally, the formula for determining the amount of indirect costs that may be charged to any grant is based on application of a negotiated indirect cost rate to the grant's direct costs. Thus, the higher the indirect cost rate the more grant funds that will be charged for these ''overhead'' expenses, and the fewer grant funds that remain available for the costs of direct services. While recognizing the legitimacy of indirect costs, we believe that having these large amounts of funds compensate partners for their general overhead and related expenses is inconsistent with the purpose of the program. We believe that the eight percent maximum on indirect cost reimbursement is a fair percentage for partners in the consortia, which still allows significant funds to be available for direct grant services.

Section 614.7 of the proposed regulations would prohibit the use of Federal grant funds under this program to pay for student financial assistance, such as scholarships, stipends, or other financial aid incentives to recruit future teachers or to subsidize the costs of their education. Individual financial aid incentives like these would not support the development of innovative program improvements for preparing technology-proficient future educators, to meet the rapidly increasing demand for well-prepared teachers during the next decade, as required by § 614.1. We also believe that using funds under this program for these financial aid incentives would be duplicative of other financial aid sources.

Section 614.8 of the proposed regulations would require that the applications be received by the deadline date that will be announced in a separate notice in the **Federal Register**. This will help facilitate an efficient, yet thorough, review process.

Clarity of the Regulations

Executive Order 12866 and the President's Memorandum June 1, 1998 on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: Are the requirements in the proposed regulations clearly stated?

- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 614.3 What regulations apply?)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Entities that would be affected by these regulations are States and State agencies, local educational agencies (LEAs), local community organizations, and Institutions of higher education. States and State agencies are not ''small entities'' under the Regulatory Flexibility Act.

Institutions of higher education are defined as ''small entities,'' according to U.S. Small Business Administration Size Standards, if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000. Small LEAs and local community organizations are small entities for the purposes of the Regulatory Flexibility Act. These proposed regulations would not have a significant economic impact on the small entities affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision.

The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1995

Although these regulations do not contain any information collection requirements, there is an application package associated with these regulations that does provide for information collection. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of the application package to OMB for its review and is requesting approval from OMB for the forms and information used to apply for new grants under this program.

Collection of Information: Discretionary Grant Programs—Application Package for Preparing Tomorrow's Teachers to Use Technology Discretionary Grant Program.

The package would apply to two types of grants, Implementation and Catalyst grants. Grants would be awarded to prepare future teachers to utilize modern learning technologies throughout the teaching curriculum. Three critical issues in the use of technology would be addressed by the grants: access to modern educational tools, support in the preparation of well-qualified, technology proficient teachers, and bridging the digital divide to ensure access to modern learning technologies and qualified teachers for all students.

The likely respondents would be State, local, or tribal governments or agencies; businesses or other for-profit agencies; nonprofit institutions; small businesses or organizations; State, local, or Tribal Government educational agencies; public and private schools, school districts, and institutions of higher education.

This collection of information is necessary for applicants to apply for new grants under the Preparing Tomorrow's Teachers to Use Technology program, authorized under Title III, section 3122 of the Improving

America's Schools Act of 1994. Grants will be awarded on the basis of competitively reviewed applications submitted to the U.S. Department of Education, Office of Postsecondary Education (OPE), Policy Planning and Innovation (PPI), Preparing Tomorrow's Teachers to Use Technology grants competition. Continued funding for each grant is based on availability of funds and substantial progress in achieving project objectives.

This application process occurs once each year to enable applicants to compete for Federal funds annually appropriated by Congress. This once-a-year application is necessary to award the annual appropriations.

The total annual public reporting and recordkeeping burden for this information collection is twenty hours per application. We anticipate that there will be 500 respondents (400 applications for Implementation Grants, and 100 applications for Catalyst grants), for a total burden of 10,000 hours.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring 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.

OMB is required to make a decision concerning the collection of information associated with these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR Part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet 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 (GPO), toll free, at 1–888–293–6498; or in Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number: 84.342, Preparing Tomorrow's Teachers to Use Technology program.)

List of Subjects in 34 CFR Part 614

Colleges and universities, Grant programs-education, Recordkeeping requirements.

(Program Authority: 20 U.S.C. 6832)

Dated: October 14, 1999.

Claudio R. Prieto,

Acting Assistant Secretary for Postsecondary Education.

For the reasons stated in the preamble, the Secretary proposes to amend Chapter VI of title 34 of the Code of Federal Regulations by adding a new part 614 to read as follows:

PART 614—PREPARING TOMORROW'S TEACHERS TO USE TECHNOLOGY

Sec.
614.1 What is the purpose of the Preparing Tomorrow's Teachers to Use Technology program?
614.2 Who is eligible for an award?
614.3 What regulations apply to this program?
614.4 Which member of the consortium must act as the lead applicant and fiscal agent?
614.5 What are the matching requirements for the consortia?
614.6 What is the maximum indirect cost rate for all consortium members and any cost-type contract?
614.7 What prohibitions apply to the use of grant funds under this program?
614.8 What is the significance of the deadline for applications?

Authority: 20 U.S.C. 6832, unless otherwise noted.

§ 614.1 What is the purpose of the Preparing Tomorrow's Teachers to Use Technology program?

(a) This program provides grants to help future teachers become proficient in the use of modern learning technologies and to support training for pre-service teachers.

(b) A grantee may not use funds under this program for in-service training or continuing education for currently certified teachers.

(Authority: 20 U.S.C. 6832)

§ 614.2 Who is eligible for an award?

(a) Except as provided in paragraph (b) of this section, an eligible applicant is a consortium that includes at least two or more of the following: institutions of higher education, schools of education, community colleges, State educational agencies, local educational agencies, private elementary or secondary schools, professional associations, foundations, museums, libraries, private sector businesses, public or private nonprofit organizations, community based organizations, or any other entities able to contribute to teacher preparation program reforms that produce technology-proficient teachers.

(b) At least one member of the consortium must be a nonprofit entity.

(Authority: 20 U.S.C. 6832)

§ 614.3 What regulations apply to this program?

The following regulations apply to Preparing Tomorrow's Teachers to Use Technology:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs), except for § 75.102.

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR part 86 (Drug-Free Schools and Campuses).

(10) 34 CFR part 97 (Protection of Human Subjects).

(11) 34 CFR part 98 (Student Rights in Research, Experimental Programs and Testing).

(12) 34 CFR part 99 (Family Educational Rights and Privacy).

(b) The regulations in this part 614.

(Authority: 20 U.S.C. 6832)

§ 614.4 Which member of the consortium must act as the lead applicant and fiscal agent?

(a) For purposes of 34 CFR 75.127, the lead applicant for the consortium must be a nonprofit member of the consortium.

(b) The lead applicant must serve as the fiscal agent.

(Authority: 20 U.S.C. 6832)

§ 614.5 What are the matching requirements for the consortia?

A consortium must provide at least 50 percent of the total project cost per budget period of the project using non-Federal funds.

(Authority: 20 U.S.C. 6832)

§ 614.6 What is the maximum indirect cost rate for all consortium members and any cost-type contract?

(a) The maximum indirect cost rate for all consortium partners and any cost-type contract made under these grants is eight percent of a modified total direct cost base or the partner's negotiated indirect cost rate, whichever rate is lower.

(b) For purposes of this section, a modified total direct cost base is total direct costs less stipends, tuition, and related fees, and capital expenditures of $5,000 or more.

(c) Indirect costs in excess of the maximum may not be—

(1) Charged as direct costs by the grantee;

(2) Used by the grantee to satisfy matching or cost sharing requirements; or

(3) Charged by the grantee to another Federal award.

(Authority: 20 U.S.C. 6832)

§ 614.7 What prohibitions apply to the use of grant funds under this program?

Grant funds may not be used—

(a) To recruit prospective teachers;

(b) To support the cost of a prospective teacher's education through any form of financial aid assistance including scholarships, internships, or student stipends; or

(c) For in-service training or continuing education for currently certified teachers.

(Authority: 20 U.S.C. 6832)

§ 614.8 What is the significance of the deadline date for applications?

Notwithstanding § 75.102, an application for a grant under this program must be received by the deadline date that will be announced in a separate notice in the **Federal Register**.

(Authority: 20 U.S.C. 6832)

[FR Doc. 99–27454 Filed 10–21–99; 8:45 am]

BILLING CODE 4000–01–U

federal register

Friday
October 22, 1999

Part IV

Federal Trade Commission

16 CFR Part 436

Franchise Rule; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Part 436

Franchise Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (the ''Commission'' or ''FTC'') is commencing a rulemaking to amend its Trade Regulation Rule entitled ''Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures'' (the ''Franchise Rule'' or ''the Rule''), based upon the comments received in response to its Advance Notice of Proposed Rulemaking (''ANPR'') and other information discussed in this notice. The Franchise Rule requires the pre-sale disclosure of material information to prospective franchisees about the franchisor, the franchised business, and the terms and conditions that govern the franchise relationship.

DATES: Comments must be submitted on or before December 21, 1999. Rebuttal comments may be submitted on or before January 31, 2000.

ADDRESSES: Written comments should be identified as ''16 CFR Part 436—Franchise Rule Comment'' and sent to Secretary, Federal Trade Commission, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. To encourage prompt and efficient review and dissemination of the comments to the public, all written comments should also be submitted, if possible, in electronic form, on either a 5¼ or a 3½ inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the word processing program used to create the document. Programs based on DOS are preferred. Files from other operating systems should be submitted in ASCII text format to be accepted. The Commission will also accept comments submitted to the following E-mail address: ''FRANPR@ftc.gov''. In addition, commenters may leave a short comment on a telephone hotline number designated for this purpose only: (202) 325–3573.

FOR FURTHER INFORMATION CONTACT: Steven Toporoff, (202) 326–3135, or Myra Howard (202) 326–2047, Division of Marketing Practices, Room 238, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

The Commission invites interested parties to submit data, views, and arguments on the proposed changes to the Rule and to address specifically the questions set forth in Section H of this notice. The comment period will remain open for 60 days. All comments will be available on the public record and, to the extent practicable, placed on the Commission's Internet web site: < http://www.ftc.gov>. After the close of the comment period, the record will remain open for another 40 days for rebuttal comments. If necessary, the Commission will also hold hearings with cross-examination and post-hearing rebuttal submissions, as specified in section 18(c) of the Federal Trade Commission Act, 15 U.S.C. 57a(c). Parties who request a hearing must file within the 60-day period a comment in response to this notice and a statement explaining why they believe a hearing is warranted and how they would participate in a hearing. Parties interested in a hearing must also designate specific facts in dispute and submit a summary of their expected testimony within the comment period. In lieu of a hearing, the Commission will also consider requests to hold additional informal public workshop conferences to discuss the issues raised in this notice and the comments.

Section A. Background

The Commission is publishing this notice pursuant to section 18 of the Federal Trade Commission (''FTC'') Act, 15 U.S.C. 57a *et seq.*, and Part 1, Subpart B, of the Commission's Rules of Practice. 16 CFR 1.7, and 5 U.S.C. 551 *et seq.* This authority permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of section 5(a)(1) of the FTC Act. 15 U.S.C. 45(a)(1).

1. The Franchise Rule

The Commission promulgated the Franchise Rule on December 21, 1978.[1] Based upon the original rulemaking record, the Commission found a serious informational imbalance between prospective franchisees and their franchisors, enabling franchisors to defraud prospective franchisees through both material misrepresentations and nondisclosures of material facts.[2] The Commission concluded that these practices led to serious economic harm to franchisees.[3]

To prevent fraudulent franchise sales practices, the Commission adopted a pre-sale disclosure rule. The Franchise Rule does not purport to regulate the substantive terms of the franchise relationship. Rather, it requires franchisors to disclose material information to prospective franchisees on the theory that an informed consumer can determine whether a franchise deal is in his or her best interest. The Franchise Rule provides prospective franchisees with four basic types of material disclosures. First, there are disclosures about the nature of the franchisor and the franchise system. For example, the franchisor must disclose the business background of the franchisor and its officers, their litigation history—including suits filed by franchisees concerning the franchise relationship—and statistics on the number of franchisees who have left the system. Second, there are disclosures that enable a prospective franchisee to assess the franchisor's financial viability and, thus, ability to perform as promised. These disclosures include the bankruptcy history of the franchisor and its officers, as well as the franchisor's audited financial statements. Third, there are disclosures about the material costs of the franchise, as well as the terms and conditions that govern the franchise relationship. Finally, there are disclosures that enable prospective franchisees to conduct their own due diligence investigation of the franchise offering, including the names and addresses of current franchisees.

2. Initial Franchise Rule Review and Request for Comments

In April 1995, as part of its continuing review of FTC trade regulation rules, the Commission published in the **Federal Register** a request for comment on the Rule (''Rule Review Notice'')[4] to determine the Rule's current effectiveness and impact. The Rule Review Notice sought comment on the standard regulatory review questions, such as the costs and benefits of the Rule, what changes in the Rule would increase the Rule's benefits to consumers, how would those changes affect compliance costs, and what changes in the marketplace and new technologies may affect the Rule.[5]

[1] 43 FR 59614 (December 21, 1978).

[2] Statement of Basis and Purpose (''SBP''), 43 FR 59621, 59625 (December 21, 1978).

[3] *Id.*

[4] 60 FR 17656 (April 7, 1995).

[5] References to the Rule Review comments are cited as: the name of the commenter, RR, commenter number (*e.g.*, NASAA, RR, Comment 43). Commission staff also held two public workshop conferences on the Rule. References to the two Rule Review public workshop transcripts are cited as: name of commenter, Sept. 95 Tr or March 96 Tr, respectively (*e.g.*, D'Imperio, Sept. 95 Tr, and Ainsley, March 96 Tr).

3. Advanced Notice of Proposed Rulemaking

Based upon the comments received during the Rule Review, the Commission tentatively determined to retain the Franchise Rule, but sought additional comment on possible amendments to the Rule. To that end, in February 1997, the Commission published an ANPR,[6] seeking comment on specific issues, including: (1) Whether the Commission should separate the disclosure requirements for business opportunities from those for franchises; (2) whether the Commission should revise the Rule's pre-sale disclosures based on the Uniform Franchise Offering Circular (''UFOC'') Guidelines promulgated by the North American Securities Administrators Association (''NASAA''); (3) whether the Commission should modify the Rule to clarify that the Rule does not reach the sale of franchises to be located or operated outside the United States, its territories, and possessions; and (4) whether the Commission should permit franchisors to comply with the Franchise Rule's disclosure obligations by posting disclosure documents on the Internet? On the assumption that the Commission would revise the Rule based upon the UFOC Guidelines model, the Commission solicited additional comment on specific disclosure items, including: (1) Whether the Commission should modify the litigation disclosures (UFOC Item 3) to require franchisors to disclose law suits filed by franchisors against franchisees; (2) whether the Commission should improve the franchisee statistics disclosures (UFOC Item 20) and if so, how; (3) whether the Commission should modify the Rule to prohibit franchisors from using ''gag clauses'' that restrict former or existing franchisees from speaking with prospective franchisees or other parties; and (4) whether the Commission should modify the financial performance disclosure requirements (UFOC Item 19) to require franchisors to include specific preambles in their disclosure documents to provide prospective franchisees with more information about financial performance claims.

The ANPR elicited 166 written comments.[7] In addition, Commission staff held six public workshop conferences on the Rule in Washington, D.C. (2 workshops); Chicago, Illinois; New York, New York; Dallas, Texas; and Seattle, Washington. Sixty-seven individuals[8] participated in the public workshops, including franchisees, franchisors, business opportunity sellers, and their representatives, state franchise and business opportunity regulators, and computer consultants. The workshop conferences generated transcripts totaling 1,548 pages.[9] Based upon the comments and the evidence discussed herein, the Commission proposes to amend the Rule in the form set forth *infra at Section I.*

Section B. The Continuing Need for the Franchise Rule

Based upon the record, the Commission believes that the Franchise Rule continues to serve a useful purpose. In response to the ANPR, commenters who address this issue overwhelmingly urge the Commission to retain the Franchise Rule.[10] These commenters, including NASAA,[11] the International Franchise Association (''IFA''),[12] National Consumers League (''NCL''),[13] and prominent franchisors,[14] note that pre-sale disclosure is a cost-effective way to provide material information to prospective franchisees, is necessary to prevent fraud, and enables franchising to flourish. Commenters also observe that pre-sale disclosure helps to reduce economic injury to franchisees by enabling them to understand fully the nature of the franchise relationship and the financial and legal commitments they will be undertaking.[15]

While almost all franchisors responding to the ANPR support the Rule,[16] existing franchisees and their advocates continue to criticize the Rule because it does not address what they believe to be the greatest problem in franchising today: abusive franchise relationships.[17] They believe that the Commission should use its unfairness authority under section 5 of the FTC Act to prohibit, for example, post-term covenants not to compete,[18] encroachment of franchisees' markets,[19] and restrictions on the sources of products or services.[20] They also urge the Commission to ban franchisors from requiring mandatory arbitration, waiver of jury trials, and choice of venue and choice of law provisions, which they believe often impede a franchisee from bringing suit or favor franchisors in litigation.[21]

Based upon the record and the Commission's law enforcement experience over the last twenty years, the Commission believes that pre-sale disclosure is necessary to protect prospective franchisees from fraudulent and deceptive franchise sales practices. Pre-sale disclosure provides prospective franchisees with material information needed to conduct their own due diligence investigation of the offering, as well as information that prospective franchisees might not otherwise be able to obtain on their own, such as the franchisor's litigation history, failure rates in the franchise system, and audited financial information. Further, complaints from franchisees about various contractual issues are prevalent and strongly suggest that pre-sale disclosure is necessary to ensure that prospective franchisees are better informed about the relationship they will be entering, including issues such

[6] 62 FR 9115 (February 28, 1997).

[7] The Commission received comments through three means: (1) In writing (108 comments); (2) by E-mail (36 comments); and (3) by telephone (22 comments). Of the 166 comments, 121 were submitted by franchisees or their representatives; 34 were submitted by franchisors or their representatives, and the remainder did not specify any affiliation. A list of commenters and the abbreviations used to identify each is attached as Attachment A.

[8] A list of public workshop participants and the abbreviatins used to identify each is attached as Attachment B.

[9] References to the public workshop conferences are cited as: the name of the commenter, date 97 Tr at ____ (*e.g.*, Simon, 18 Sept 97 Tr at 146).

[10] *E.g.*, Baer, Comment 25, at 2; Hogan & Hartson, Comment 28, at 2; Kaufmann, Comment 33, at 2–3; SBA Advocacy, Comment 36, at 2–3; Kestenbaum, Comment 40, at 1; IL AG, Comment 77, at 1. At the same time, several commenters urge the Commission to streamline the Rule and to create greater uniformity with state franchise regulations. *E.g.*, Bruce, Comment 3, at 1; Baer, Comment 25, at 2; Kaufmann, Comment 33, at 3; IL AG, Comment 77, at 5; Cendant, Comment 140, at 2.

[11] NASAA, Comment 120, at 1–4.

[12] IFA, Comment 82, at 1–2.

[13] NCL, Comment 35, at 2.

[14] *E.g.*, Cendant, Comment 140, at 1–2. See also Better Homes & Gardens Real Estate Service, Re/Max Corporation, and The Prudential Real Estate Affiliates, Inc., (RR Comment 24, at 1); Snap-On, Inc. (RR Comment 27, at 1); Little Caesars (RR Comment 31, at 1); The Southland Corporation (7-Eleven) (RR Comment 47, at 1); Medicap Pharmacies (RR Comment 48, at 1); Forte Hotels (RR Comment 52, at 1).

[15] *E.g.*, Hogan & Hartson, Comment 28, at 2; SBA Advocacy, Comment 36, at 2; Zarco & Pardo, Comment 134, at 1. The record reveals that franchisees may suffer loses of several hunded thousand dollars. *E.g.*, Slimak, 22 Aug 97 Tr at 26 ($289,000 loss); Lundquist, 22 Aug 97 Tr at 48 (half a million dollar loss). See also NCL, Comment 35, at 2.

[16] But see Winslow, Comment 84, at 1.

[17] *E.g.*, Brown, Comment 4, at 2–3; Purvin, Comment 81, at 4.

[18] *E.g.*, Rachide, Comment 32, at 3; AFA, Comment 62, at 3; Slimak, Comment 130, at 1; Vidulich, 22 Aug 97 Tr at 21.

[19] *E.g.*, Brown, Comment 4, at 2; Manuszak, Comment 13, at 1; AFA, Comment 62, at 1; Buckley, Comment 97, at 3; Zarco & Pardo, Comment 134, at 2.

[20] *E.g.*, Colenda, Comment 71, at 1; Slimak, 22 Aug 97 Tr at 26; Chiodo, 21 Nov 97 Tr at 293–94.

[21] *E.g.*, Brown, Comment 4, at 3; Bell, Comment 30, at 1; White, Comment 54, at 1; AFA, Comment 62, at 3; Johnson, Comment 67, at 1.

as rights to protected territories and product source restrictions.

At the same time, the Commission recognizes that pre-sale disclosure addresses only some of the issues franchisees may face in the course of operating their franchises. From the significant number of complaints filed by existing franchisees, the Commission has no doubt that some franchisees are dissatisfied with their franchise purchase, believe a serious imbalance of power exists between franchisors and franchisees, or otherwise believe that franchise contracts are oppressive. Nonetheless, the record does not support the Commission's ability to broaden the Rule to address substantive franchise relationship issues.

As an initial matter, franchise relationships are matters of contract law that traditionally have been regulated at the state level. Indeed, several states, even those without franchise disclosure laws, have some type of franchise relationship law. In contrast to the states, the Commission traditionally does not regulate or set the terms of private contracts in franchising or in any other economic sector.[22]

Further, the Commission believes that a widespread misconception exists about the scope of its unfairness jurisdiction. ''Unfairness'' is a term of art that has a specific legal meaning that has been developed by the Commission over time[23] and adopted by Congress in 1994. Section 5 states that the Commission does not have authority to declare an act or practice unfair unless it meets three specific criteria: (1) The act or practice causes or is likely to cause substantial injury; (2) that is not outweighed by countervailing benefits to consumers or to competition; and (3) is not reasonably avoidable.[24] Accordingly, before the Commission could consider a rulemaking prescribing the substantive terms of private contracts,[25] the Commission would need evidence not only of substantial harm, but also specific data that would enable the Commission to weigh the purported harm against any countervailing benefits to the public at large or to competition. In addition, the Commission would need evidence showing that franchisees cannot reasonably avoid the alleged harm.

While the Commission finds that franchisees and their advocates suggest economic harm to individual franchisees may result from some franchise practices, they have not shown to date that such harm is substantial and not outweighed by countervailing benefits. Further, in at least some instances, prospective franchisees could also avoid harm by comparison shopping for a franchise system that offers more favorable terms and conditions and by considering alternatives to franchising as a means of business ownership. Thus, the Commission continues to believe that pre-sale disclosure is the best available vehicle, within its statutory authority, to address franchise relationship issues and, as discussed below, proposes to enhance the Rule's disclosures to enable prospective franchisees to investigate the franchise relationship fully before they commit to buying a franchise. This is totally consistent with the Commission's long-held view that free and informed consumer choice is the best regulator of the market.

Section C. Discussion of Proposed Revisions to the Franchise Rule

1. The Proposed Rule Focuses on the Sale of Franchises

The proposed Rule focuses exclusively on the sale of franchises. The Commission agrees with the overwhelming view of the commenters who address this issue that franchises and business opportunities are distinct business arrangements that require separate disclosure approaches.[26] For example, many of the Rule's pre-sale disclosures, in particular those pertaining to the parties' detailed relationship, do not apply to the sale of most business opportunities, which typically involve fairly simple contracts or purchase agreements. The Rule's detailed disclosure obligations may also create barriers to entry for legitimate business opportunity sellers.[27] Accordingly, the Commission intends to conduct a separate rulemaking proceeding for business opportunity sales.

2. The Proposed Rule Is Based Upon the UFOC Guidelines

The proposed Rule is based upon the UFOC Guidelines' disclosure model. Without exception, the commenters who address this issue—including franchisors and franchisees alike—urge the Commission to revise the Rule to mirror the UFOC.[28] These commenters emphasize that the UFOC has improved disclosures[29] and is already used by the vast majority of franchisors.[30] Further, uniformity between federal and state franchise disclosure laws will help to reduce compliance costs[31] and will facilitate comparison shopping among franchise systems.[32] Moreover, as NASAA notes, the UFOC Guidelines were developed with significant input from franchisors, franchisees, and other franchise administrators, and they were subject to public hearings and notice and comment.[33] Indeed, the UFOC Guidelines have been well-received by all interests involved in franchising and have become the national industry standard.[34]

The proposed Rule, however, differs from the UFOC Guidelines in several respects. The Commission has reorganized the UFOC disclosures to conform to the standard Code of Federal Regulations format, has edited the UFOC disclosures for clarity, and has streamlined the disclosures where possible. For example, the proposed Rule does not include many of the UFOC Guidelines' detailed instructions, nor its sample answers. In a few

[22] For example, the Commission's Funeral Industry Practices Rule, 16 CFR 453, requires funeral homes to disclose pre-sale the costs of its goods and services, but does not regulate the terms and conditions of private funeral services contracts. Similarly, the Used Motor Vehicle Trade Regulati0n Rule (''Used Car Rule''), 16 CFR 455, requires used car sellers to disclose pre-sale whether the car comes with a warranty, but does not purport to regulate the terms and conditions of private used car sales.

[23] See *FTC* v. *Orkin Exterminating Co.*, 108 F.T.C. 263 (1986), aff'd, *Orkin Exterminating Co.* v. *FTC*, 849 F.2d 1354 (11th Cir. 1988), cert denied, 488 U.S. 1041 (1989).

[24] 15 U.S.C. § 45(n) (added by The Federal Trade Commission Act Amdnements of 1994, Pub. L. No. 103–312). In amendment the FTC Act, Congress also made clear that the Commission may not declare an act or practice unfair based upon public policy concerns alone. *Id*.

[25] In *Orkin*, the seminal case in which the Commission exercised its unfairness jurisdiction in the context of a commercial contract, the Commission neither dictated nor revised the substantive terms of the Orkin contract, but required Orkin to abide by the contractual terms and conditions that Orkin itself freely chose and offered to the public. 849 F.2d at 1363.

[26] *E.g.*, Brown, Comment 4; Baer, Comment 25, at 5; Hogan & Hartson, Comment 28; IFA, Comment 82, at 2; NASAA, Comment 120, at 4; Selden, Comment 133, at 2. But see NCL, Comment 35.

[27] See Muncie, Comment 15, at 2.

[28] *E.g.*, AFA, Comment 62, at 2; IL AG, Comment 77, at 1; IFA, Comment 82, at 1; Bundy, Comment 119, at 1; NASAA, Comment 120, at 2; Cendant, Comment 140, at 2.

[29] *E.g.*, Brown, Comment 4, at 1; Kaufmann, Comment 33, at 3; AFA, Comment 62, at 2; IL AG, Comment 77, at 1; WA Securities, Comment 117, at 1; NASAA, Comment 120, at 2–3.

[30] *E.g.*, Baer, Comment 25, at 2; Hogan & Hartson, Comment 28, at 5–6; Kaufmann, Comment 33, at 3; Kestenbaum, Comment 40, at 1; WA Securities, Comment 117, at 1.

[31] *E.g.*, Brown, Comment 4, at 2; Baer, Comment 25, at 2; AFA, Comment 62, at 2; WA Securities, Comment 117, at 1; NASAA, Comment 120, at 3. Cendant observes that interpretations of the UFOC often vary from state to state and asserts that the Commission's interpretation of the UFOC would bring greater uniformity to the field. Cendant, Comment 140, at 3.

[32] Kaufmann, Comment 33, at 3.

[33] NASAA, Comment 120, at 2.

[34] *E.g.*, Karp, 19 Sept 97 Tr at 90.

instances, the Commission has made substantive changes, enhancing the UFOC disclosures by retaining broader provisions in the current Rule or by adding new disclosures based upon the record and the Commission's law enforcement experience. Each of these changes is discussed in more detail below.

3. Title of the Rule

The Commission proposes to change the title of the Rule to ''Disclosure Requirements and Prohibitions Concerning Franchising.'' This proposed change is necessary to eliminate the current title's reference to business opportunity ventures, which, as discussed above, will be addressed in a separate rulemaking proceeding.

4. Proposed Section 436.1: Definitions

The proposed Rule begins with a definitions section that sets forth each definition in alphabetical order. In many instances, the proposed definitions are substantially similar to those already contained in the Rule or in the UFOC Guidelines. In some instances, the Commission proposes to revise a definition for clarity, or to update a definition to embrace long-standing Commission policies. The Commission also proposes to add a few new definitions that are needed to clarify new Rule provisions or instructions (*e.g.*, Internet). At the same time, the Commission proposes to streamline the Rule by eliminating four definitions that no longer serve a useful purpose: (1) ''business day;'' [35] (2) time for making of disclosures; [36] (3) personal meeting; [37] and (4) cooperative association,[38] as discussed below.

a. Proposed Section 436.1(a) (''Action'')

Proposed section 436.1(a) adopts the UFOC definition of the term ''action.'' [39] It makes clear that disclosures involving litigation include not only civil matters brought before a court, but matters before administrative agencies and arbitrators. This definition is also consistent with the Commission's current interpretation of the term ''action.'' [40]

b. Proposed Section 436.1(b) (''Affiliate'')

In keeping with the Commission's goal of revising the Rule to mirror the UFOC Guidelines, proposed section 436.1(b) adopts the UFOC's definition of the term ''affiliate.'' [41] This definition is greatly streamlined from the current Rule definition, which defines ''affiliate'' in three parts as follows:

> The term affiliated person means a person * * * (1) Which directly or indirectly controls, is controlled by, or is under common control with, a franchisor; or (2) Which directly or indirectly owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of a franchisor; or (3) Which has, in common with a franchisor, one or more partners, officers, directors, trustees, branch managers, or other persons occupying similar status or performing similar functions.

16 CFR § 436.2(i).

c. Proposed Section 436.1(c) (''Disclose'')

Proposed section 436.1(c) is based upon the UFOC's definition of the term ''disclose,'' which incorporates a ''plain English'' requirement.[42] Currently, there is no comparable Rule definition. The Commission, however, proposes to define the term ''plain English'' in a separate definition, as discussed below.

d. Proposed Section 436.1(d) (''Financial Performance Representation'')

Proposed section 436.1(d) adds an explicit definition of the term ''financial performance representation.'' [43] The current Rule does not specifically define the term. To the extent that a definition appears, it is cast as a prohibition: It is a violation of section 5 to ''make any oral, written, or visual representation to a prospective franchisee which states a specific level of potential sales, income, gross, or net profit for the prospective franchisee, or which states other figures which suggest such a specific level, unless * * *'' 16 CFR § 436.1(b).

The Commission believes that the proposed definition of ''financial performance representation'' combines the best features of both the current Rule and UFOC definitions. Like the current Rule, proposed section 436.1(d) retains the phrase ''or which states other figures which suggest such a specific level,'' which the Commission believes is necessary to ensure that franchisors understand fully that the Rule covers the making of implied financial performance representations. Following the UFOC approach, the definition also specifies that financial performance information may include both historical performance representations and projections and may be in the form of charts, tables, and mathematical calculations. The Commission also proposes to update the definition by clarifying that financial performance representations include those disseminated through the Internet.

e. Proposed Section 436.1(e) (''Fiscal Year'')

Proposed section 436.1(e) retains the current definition of the term ''fiscal year'' set out at 16 C.F.R. § 436.2(m)

f. Proposed Section 436.1(f) (''Fractional Franchise'')

Proposed section 436.1(f) slightly modifies the fractional franchise exemption currently found at 16 C.F.R. § 436.2(h). It incorporates the Commission's long-standing policy that the parties must anticipate that the additional sales will not exceed 20 percent of total sales within the first year of operation.[44] The definition also makes explicit what previously has been only implied: that the parties must have a reasonable basis to assert the exemption.[45]

g. Proposed Section 436.1(g) (''Franchise'')

Proposed section 436.1(g) modifies the definition of the term ''franchise'' in three ways. First, the current definition of the term ''franchise'' was drafted broadly to cover both the sale of franchises and business opportunities. In light of the Commission's proposal to address business opportunity sales in a separate trade regulation rule, the Commission believes the definition of the term ''franchise'' should now be limited to ensure that it no longer captures ordinary business opportunity sales. To that end, the Commission proposes to revise the second definitional elements: significant control or assistance. Specifically, the Commission proposes to revise the Rule to cover franchisors that exert or have the authority to exert significant ''continuing control'' over the franchisee's method of operation. While franchisors typically exert control throughout the franchise agreement term, business opportunity sellers often do not exert control, or limit their control to the initial stage of a

[35] 16 CFR 436.2(f).

[36] 16 CFR 436.2(g).

[37] 16 CFR 436.2(o).

[38] 16 CFR 436.2(l).

[39] UFOC Item 3, Definitions, ii.

[40] See Final Interpretive Guides, 44 FR at 49966, 49973 (August 24, 1979).

[41] UFOC Item 1, Instructions, v. In several UFOC disclosure items, the term ''affiliate'' has a more restrictive meaning. In those instances, the definition of ''affiliate'' is modified, consistent with the UFOC Guidelines.

[42] UFOC Instruction 150.

[43] The Commission also proposes to use the term ''financial performance representation,'' instead of the widely used ''earnings claim.'' Some franchisors do not use ''earnings'' as a measure of performance. For example, performance in the hotel industry is typically measured by room occupancy rates.

[44] See Final Interpretive Guides, 44 FR at 49968.

[45] See Advisory 97–1 Bus. Franchise Guide (CCH) ¶ 6,481, at 9,681–82 (1997); Advisory 96–2, Bus. Franchise Guide (CCH) ¶ 6,477, at 9,675 (1996).

purchaser's business. In a similar vein, the Commission proposes to revise the Rule to cover only franchisors that offer significant assistance ''extending beyond the start of the business operation,'' recognizing that in many franchise systems the franchisor's assistance extends beyond the initial phase of the business. For example, the franchisor may offer ongoing advertising, training, and business development plans. In contrast, a business opportunity seller's assistance is often limited to the initial phase of the purchaser's business, such as locating vending machines or providing purchasers with an initial list of accounts.

Second, consistent with its goal of streamlining the Rule wherever possible, the Commission also proposes to eliminate from the current definition of ''franchise'' the alternative that the franchisee ''indirectly or directly [is] required to meet the quality standards prescribed by [the franchisor.]'' 16 CFR § 436.2(a)(1)(i)(a)(2). The Commission believes that quality standards are simply one form of control that a franchisor may impose on a franchisee. As long as the Rule retains the more inclusive ''control'' element, the specific ''quality standards'' element appears to be unnecessary.

Finally, the Commission proposes to modify the definition of the term ''franchise'' to incorporate three long-standing Commission policies. The revised definition makes clear that: (1) A relationship will be deemed a franchise if it meets the three definitional elements of a franchise, regardless of what it may be called;[46] (2) a business relationship will be deemed a franchise if it is offered or represented as having the characteristics of a franchise, regardless of any failure on the franchisor's part to perform as promised;[47] and (3) the term ''payment'' includes payments ''by contract or by practical necessity.''[48]

h. Proposed Section 436.1(h) (''Franchise Seller'')

Proposed section 436.1(h) introduces a new term—''franchise seller.'' This definition combines the current terms ''franchisor'' and ''franchise broker'' into a single concept. The Commission believes that this approach will streamline the Rule considerably. Currently, whenever the Rule refers to the obligation to furnish disclosure documents, it must specifically refer to both franchisors and franchise brokers. Not only is this reference longer than necessary, it is incomplete because it does not specifically include the franchisor's employees, sales representatives, and agents who also may sell franchises and have an obligation to furnish disclosures. Accordingly, the term ''franchise seller'' refers to all parties having an obligation to provide disclosure documents. At the same time, the definition adopts long-standing Commission policy that a franchisee seeking to sell its own outlet is not covered by the Rule.[49]

i. Proposed Section 436.1(i) (''Franchisee'')

Proposed section 436.1(i) simplifies the current definition of the term ''franchisee.'' The current Rule defines the term ''franchisee'' in an awkward and circular fashion: ''any person (1) who participates in a franchise relationship as a franchisee, as denoted in paragraph (a) of this section, or (2) to whom an interest in a franchise is sold.'' 16 CFR § 432.(d). The revised definition deletes unnecessary references to other Rule sections and focuses on the grant of an interest in a franchise, which is the core issue triggering a franchisor's disclosure obligations.

j. Proposed Section 436.1(j) (''Franchisor'')

Similarly, proposed section 436.1(j) streamlines the definition of the term ''franchisor.'' The proposed definition deletes unnecessary references to other Rule sections and focuses on the grant of an interest in a franchise.

k. Proposed Section 436.1(k) (''Gag Clause'')

Proposed section 436.1(k) introduces a new term—''gag clause.''[50] As discussed in greater detail below at Section C.8.t., the Commission proposes to amend the Rule to require franchisors to disclose information about gag clauses, namely contractual provisions that prohibit or restrict existing or former franchisees from discussing with prospective franchisees their experiences as franchisees. The proposed definition focuses exclusively on a franchisee's ability to discuss his or her personal experience as a franchisee within a franchisor's system. It does not include a confidentiality agreement between a franchisor and a company officer who happens to be a franchisee, and it excludes confidentiality agreements created to protect a franchisor's trade secrets and other proprietary information.

l. Proposed Section 436.1(l) (''Internet'')

Proposed Section 436.1(l) is new. It defines the term ''Internet'' broadly to capture all communications between computers and between computers and television, telephone, facsimile, and similar communications devices. This definition is necessary because, as explained in Section C.10. below, the Commission proposes to amend the Rule to permit franchisors to comply with the Rule electronically, including the use of the World Wide Web and E-mail.[51]

m. Proposed Section 436.1(m) (''Leased Department''

Proposed section 436.1(m) (''Leased Department''). Proposed section 436.1(m) greatly streamlines the Rule's leased department exemption. Leased departments are one of four express Rule exemptions. Currently, the Rule contains no definition of the term ''leased department.'' Rather, the concept is explained in the exemptions section of the Rule as follows:

> The provisions of this part shall not apply to a franchise * * * [w]here pursuant to a lease, license, or similar agreement, a person offers, sells, or distributes goods, commodities, or services on or about premises occupied by a retailer-grantor primarily for the retailer-grantor's own merchandising activities, which goods, commodities, or services are not purchased from the retailer-grantor or persons whom the lessee is directly or indirectly (a) required to do business with by the retailer-grantor or (b) advised to do business with by the retailer-grantor where such person is affiliated with the retailer-grantor.

16 CFR 436.2(a)(3)(ii). The Commission believes that the proposed revised definition is shorter, clearer, and easier to understand.

n. Proposed Section 436.1(n) (''Material'')

Proposed section 436.1(n) also streamlines the current definition of ''material,'' which is currently defined as:

> The terms material, material fact, and material change shall include any fact, circumstance, or set of conditions which has a substantial likelihood of influencing a

[46] See Final Interpretive Guides, 44 FR at 49966.

[47] SBP, 43 FR at 59699.70.

[48] See Final Interpretive Guides, 44 FR at 49967.

[49] See Final Interpretative Guides, 44 FR at 49969.

[50] In the ANPR, the Commission used the term ''gag orders.'' During the New York public workshop conference, several panelists were confused by the use of the word ''order,'' noting that it implied a court mandate. *E.g.*, Forseth, 18 Sept. 97 Tr at 40; Zaslav, *id.*, at 55. Accordingly, the Commission will use the term ''gag clause,'' to avoid any implication that the Rule will address only court imposed speech restrictions.

[51] The proposed definition is modeled, in part, after the definition of ''internet'' set forth in the Commission's recently published Request for Comment on the Interpretation of Rules and Guides for Electronic Media, 63 FR 24996–97 and n.1 (May 6, 1998) (''Internet Notice'').

reasonable franchisee or a reasonable prospective franchisee in the making of a significant decision relating to a named franchise business or which has any significant financial impact on a franchisee or prospective franchisee.

16 CFR § 436.2(n). The proposed definition eliminates the Rule's current reference to ''significant financial impact.'' The Commission believes that this reference is redundant in that any circumstance impacting upon a person's finances would also necessarily influence his or her decision-making process. Accordingly, the proposed revision is not a substantive change, but simply part of the Commission's effort to streamline the Rule where possible.

o. Proposed Section 436.1(o) (''Officer'')

Proposed section 436.1(o) adds a new definition—''officer.''[52] Although several Rule disclosures pertain to the franchisor's officers—such as the disclosures for litigation and bankruptcies—the Rule currently does not specifically define the term ''officer.'' Rather, in the litigation disclosure, the Commission gives examples of an officer, including ''the chief executive and chief operating officer, financial, franchise marketing, training, and service officers.'' 16 C.F.R § 436.1(a)(2). The proposed definition makes clear that franchisors must disclose information about all officers, including *de facto* officers, with significant managerial responsibilities for marketing and/or servicing franchises. The Commission believes that this proposed Rule amendment is necessary to eliminate any doubt that the Rule is to be read broadly, capturing all individuals who function as officers, whether or not they are named in the franchisor's incorporation papers or carry a particular corporate title.[53]

p. Proposed Section 436.1(p) (''Person'')

Proposed section 436.1(p) retains the Rule's current definition of the term ''person'' set out at 16 CFR § 436.2(b).

q. Proposed Section 436.1(q) (''Plain English'')

Proposed section 436.1(q), a new definition, defines the term ''plain English.'' This definition is necessary because, as discussed below at Section C.9., the Commission proposes to adopt a requirement that franchisors write their disclosure documents in plain English, consistent with the UFOC Guidelines. The proposed definition of ''plain English'' is modeled after the Securities and Exchange Commission's (''SEC'') plain English requirement, set forth in the recently promulgated mutual fund regulations.[54]

r. Proposed Section 436.1(r) (''Predecessor'')

Proposed section 436.1(r) introduces a new term—''predecessor.'' Because several of the proposed Rule's disclosures pertain to a franchisor's predecessors, the Commission has incorporated the UFOC's definition of that term.[55] The Commission also proposes to enhance the UFOC definition to make clear that the term ''predecessor'' includes any person from whom the franchisor has obtained the right to use the trademark or trade secrets associated with the franchise system.

s. Proposed Section 436.1(s) (''Principal Business Address''

Proposed section 436.1(s) introduces a new term—''principal business address,'' modeled after the UFOC's definition of that term.[56] The proposed definition makes clear that a franchisor must use its principal street address, not a post office box or private mail drop. The Commission believes the proposed amendment will reduce fraud in franchise sales by making it easier for prospective franchisees to find and investigate the franchisor and its principals.

t. Proposed Section 436.1(t) (''Prospective Franchisee''

Proposed section 436.1(t) follows the current Rule's definition of the term ''prospective franchisee'' set out at 16 CFR § 436.2(e). However, where the definition refers to ''franchisor or franchise broker,'' the Commission has revised the definition to substitute the new term ''franchise seller,'' as discussed above.

u. Proposed Section 436.1(u) (''Required Payment''

Proposed section 436.1(u) is new. The current Rule does not specifically define the term ''required payment.'' Proposed section 436.1(u) defines that term in accordance with long-standing Commission policy that a payment can be required by contract or by practical necessity.[57]

v. Proposed Section 436.1(v) (''Sale of a Franchise''

Except for some minor editing, the definition of ''franchise sale'' is the same as that set out at 16 CFR § 436.2(k).

w. Proposed Section 436.1(w) (''Signature'')

Proposed section 436.1(w) introduces a new term—''signature.'' As discussed in Section C.10. below, the Commission proposes to amend the Rule to permit franchisors to use electronic media to furnish disclosure documents under certain conditions, provided prospective franchisees confirm their identity by signing an acknowledgment of receipt. Modeled after the Federal Reserve System's Interim Rule Amending Regulation E, implementing the Electronic Fund Transfer Act (''EFTA''),[58] the proposed definition is flexible, permitting franchisees to confirm their identity by alternative means, such as the use of digital signatures and passwords.

x. Proposed Section 436.1(x) (''Trademark'')

Proposed section 436.1(x) adopts the Commission's long-standing definition of the term ''trademark'' to include service marks, logos, and other commercial symbols.[59]

y. Proposed Section 436.1(y) (''Written'')

Proposed section 436.1(y) defines the term ''written'' to include electronic media, such as computer disk and the Internet. This definition is necessary because, as discussed below at Section C.10., the Commission proposes to amend the Rule to permit franchisors to furnish disclosures electronically. The proposed definition clarifies that electronic media fall within the ambit of a ''written'' document.[60]

5. Proposed Section 436.2: Furnishing and Preparing Disclosure Documents

a. Scope of the Rule

Proposed section 436.2 begins with a new provision that limits the Rule's scope to the sale of franchises in the United States, its possessions, or territories. The overwhelming number of ANPR commenters who address this issue urge the Commission to limit the Rule's application to domestic franchise

[52] See NASAA UFOC Guidelines Commentary (June 21, 1994) Bus. Franchise Guide (CCH) ¶5,800, at 8,466 (Item 4 bankruptcy disclosures).

[53] See *FTC* v. *P.M.C.S., Inc.*, No. 96–5426 (E.D. N.Y. 1996) (franchisor fails to disclose ''silent partner'' with prior bankruptcy); *FTC* v. *Why USA, Inc.*, No. 92–1227–PHX–SMM (D. Ariz. 1992) (franchisor fails to disclose officers and their prior litigation). See also Lay, 22 Aug 97 Tr at 6 (franchisee was not informed that franchisor's director of franchising (who was not a corporate officer) had been declared bankrupt).

[54] Registration Form Used by Open-End Management Investment Companies, SEC Release No. 33–7512, 17 CFR 274.11A.

[55] See UFOC Item 1.

[56] UFOC, Item 1C, Instructions, i.

[57] See Final Interpretive Guides, 44 FR at 49967.

[58] 63 FR 14528, 14531 (March 25, 1998).

[59] See Final Interpretive Guides, 44 FR at 49966.

[60] See Internet Notice, 63 FR at 24996.

sales.[61] Only four commenters[62] urge the Commission to enforce the Rule internationally, raising essentially three arguments: (1) It would be inconsistent for a franchisor to subject a foreigner to American law and American courts through contractual choice of venue and choice of law provisions without simultaneously extending the benefit of American law, namely pre-sale disclosure;[63] (2) American citizens who purchase a franchise abroad would not be protected by American law;[64] and (3) the Commission has jurisdiction over foreign franchise sales and should not willingly restrict its own jurisdiction.[65]

The Commission believes that the record adequately supports its tentative finding in the ANPR that mandated pre-sale disclosure in international franchise sales is unnecessary, may be misleading, and may impede competition. The Commission developed a pre-sale disclosure rule in response to problems occurring in the domestic market.[66] None of the four ANPR commenters noted above offer data or other evidence tending to show that fraud or deception by American companies engaging in international franchises sales is prevalent.

Further, the record strongly supports the view that franchises are sold internationally to sophisticated investors who are generally represented by counsel or who otherwise can protect their own interests. Moreover, there is no evidence in the record that a disclosure document addressing the American market would be beneficial to a prospective foreign investor. Just the opposite appears to be true. Such a document may be irrelevant and potentially misleading when given to a foreign investor (or an American investing in a foreign market) because of vast differences between American and foreign markets, cultures, and legal systems. Risks to the investor would arise primarily from economic conditions and cultural values in those countries, not in the United States. For a disclosure document to be relevant, a franchisor would have to prepare individual disclosure documents tailored to each specific foreign market. Such a requirement, however, would very likely impose extraordinary burdens and costs on franchisors and would impede competition with companies from countries without similar disclosure obligations,[67] despite the lack of evidence in the record of fraud or deception in foreign franchise sales.

Finally, by limiting the application of the Rule to domestic franchise sales, the Commission is not restricting its own jurisdiction. Assuming that the Commission has jurisdiction over foreign franchise sales,[68] it will continue to do so even if the Rule is amended as proposed in the ANPR. Accordingly, in appropriate circumstances, the Commission may address unfair or deceptive franchise sales abroad, consistent with its authority under section 5.[69]

b. Proposed Section 436.2(a): Obligation To Furnish Documents

Proposed section 436.2(a) sets forth the Rule's two principal disclosure obligations: It is a violation of section 5 of the FTC Act for any franchise seller to fail to furnish prospective franchisees with a copy of the franchisor's disclosure document and the completed franchise agreement within the specific time frames discussed below. Consistent with current Commission policy, this section also provides that the obligation to furnish documents can be satisfied either by the franchisor itself or by another franchise seller.[70] At the same time, it makes clear that all franchise sellers—including the franchisor's sales representatives and third-party franchise sellers—can be held individually liable for their failure to furnish prospective franchisees with the required disclosure documents.

c. Proposed section 436.2(a)(1): 14-Day Disclosure Review Period

Proposed section 436.2(a)(1) requires franchisors to furnish prospective franchisees with disclosure documents 14 days before the franchisee signs a binding agreement or pays any fee in connection with the franchise sale. This provision modifies the current Rule provision that requires franchisors to furnish disclosure document at the earlier of the first personal (face-to-face) meeting[71] or at least 10 business days before the franchisee signs a binding agreement or pays a fee.[72]

In the ANPR, the Commission questioned whether the Rule's current requirement that franchisors provide prospective franchisees with a disclosure document at the first personal meeting continues to serve a useful purpose. Recognizing that the term ''personal meeting'' may be obsolete in light of the growing use of the telephone, facsimile machines, and the Internet as vehicles of commerce, the Commission asked whether the Commission should replace the term ''personal meeting'' with the term ''first substantive discussion.''[73]

Several commenters agree that the term ''personal meeting'' has become irrelevant in an era where even large investments are made by telephone or via the Internet.[74] Many franchisors and their representatives, however, oppose changing the term ''personal meeting'' to ''substantive discussion.'' They believe that the term ''substantive discussion'' is ambiguous,[75] and would not reach Internet sales, where presumably no actual discussion takes place.[76] Others fear that franchisors, who may receive countless telephone calls in a day, may have to stop talking with callers, lest they trigger the Rule's disclosure obligations.[77] Several commenters urge the Commission to

[61] *E.g.*, SBA Advocacy, Comment 36, at 9; Loeb & Loeb, Comment 63, at 2; IFA, Comment 82, at 3–4; Jeffers, Comment 116, at 7; CA Bar, Comment 124, at 2–3; Cendant, Comment 140, at 2 and 4–5.

[62] Brown, Comment 4, at 4–5, and Comments 6, 96, and 103; Stubbings, Comment 21, at 1; Embassy of Argentina, Comment 132, at 1; Selden, Comment 133, at 2–3.

[63] Brown, Comments 6, at 2; Embassy of Argentina, Comment 132, at 1; Selden, Comment 133, at 2.

[64] Selden, Comment 133, at 2. See also Stubbings, Comment 21, at 1.

[65] Brown, Comments 4, at 3; 6, at 2; 103, at 15–16.

[66] Hogan & Hartson reviewed the Commission's Rule, as well as the UFOC Guidelines, and observed that many of the provisions are limited to disclosures involving the domestic market. For example, UFOC Item 20 refers to the number of franchise sales ''in this state.'' Hogan & Hartson, Comment 28, at 3.

[67] See Cendant, Comment 140, at 4.

[68] See *Branch* v. *FTC*, 141 F.2d 31 (7th Cir. 1944). But see *Nieman* v. *Dryclean U.S.A. Franchise Company, Inc.*, _____ F.3d _____ (11th Cir. June 21, 1999).

[69] Even some commenters favoring the ANPR proposal that the Commission limit the Rule's scope acknowledge that the Commission will retain its authority under section 5 to target American companies that may fraudulently sell franchises abroad. *E.g.*, Hogan & Hartson, Comment 28, at 4.

[70] See 16 CFR 436.2(g).

[72] 16 CFR 436.1(a); 436.2(o).

[72] 16 CFR 436.1(a); 436.2(f)–(g).

[73] 62 FR at 9122.

[74] For example, Kennedy Brook observes that franchise sales can occur entirely electronically ''where the contact is made over the Web, where E-mail is exchanged, where telephone [calls] are exchanged, where documents are sent out by Federal Express, and where, in fact, there never is a face-to-face meeting.'' Brooks, 18 Sept 97 Tr at 160. See also NCL, Comment 35, at 4–5; SBA Advocacy, Comment 36, at 9; Kestenbaum, Comment 40, at 2; IL AG, Comment 77, at 3–4; Winslow, Comment 85, at 1.

[75] *E.g.*, Duvall, Comment 19, at 3; Baer, Comment 25, at 6; Loeb & Loeb, Comment 63, at 2; Tifford, Comment 78, at 7–8; IFA, Comment 82, at 4.

[76] Hogan & Hartson, Comment 28, at 9. Kenneth Costello also observes that in the SBP and Final Interpretive Guides the Commission drew a distinction between sales via mail or telephone and face-to-face meetings because the latter could be prone to high pressure sales. He notes that Internet sales require an affirmative action on the part of the prospective franchisee to investigate a franchisor via modem, ''a connection that is even more readily broken than a telephone call.'' Loeb & Loeb, Comment 63, at 2.

[77] Baer, Comment 25, at 6.

eliminate the personal meeting trigger altogether and, as an alternative, require franchisors to furnish disclosures a minimum number of days prior to the franchise sale.[78]

The Commission agrees that the personal meeting disclosure trigger has become obsolete in the communications age where prospective sellers now communicate with buyers through a wide array of communications media, including facsimile machine, E-mail, and the Internet. Accordingly, proposed section 436.2(a)(1) streamlines the Rule by eliminating the first personal meeting trigger. As long as the prospective franchisee has a minimum number of days in which to review the franchisor's disclosures, that should suffice to combat deceptive franchise sales. A pre-sale review period can also function as a ''cooling-off'' period, enabling prospective franchisees to resist high pressure sales techniques. The Commission also proposes to streamline the Rule further by creating a bright line 14-day review period in lieu of the Rule's current ''10 business days'' provision. The term ''10 business days'' may be unnecessarily confusing because franchisors must remember to include all federal holidays, some of which are not observed in every state. In addition, in most instances, 10 business days as a practical matter amounts to 14 days.

d. Proposed Section 436.2(a)(2): Five-Day Contract Review Period

Proposed section 436.2(a)(2) streamlines the Rule further by requiring franchisors to afford prospective franchisees at least five days to review the completed franchise agreement. This would modify the current Rule provision found at 16 CFR 436.1(g) that requires franchisors to furnish prospective franchisees with a copy of the completed agreement ''at least 5 business days prior to the date the agreements are to be executed.'' The Commission recognizes that five business days usually means seven days. However, the Commission believes that a seven-day contract review requirement might be burdensome for both franchisors and franchisees who often want to sign a franchise agreement quickly in order to cement their deal.[79] The Commission believes that a five-day review period strikes the right balance between affording prospective franchisees time to review the completed contract and accommodating the parties' desire to move the deal forward.

e. Proposed Section 436.2(b): Furnishing Disclosures

Proposed section 436.2(b) provides some additional guidance on what constitutes ''furnishing'' disclosures. It makes clear that franchisors can comply with the Rule's timing provisions by delivering a paper copy, or transmitting an electronic copy of documents, before the required date. It also clarifies that franchisors who wish to mail documents should do so by first class mail and by adding an additional three days in order to ensure that the prospective franchisee receives the documents in the time frame required by the Rule. Otherwise, it is possible that a prospective franchisee may receive a copy of the completed franchise agreement, for example, only a day or two before he or she is scheduled to sign the agreement. The Commission believes that this clarification is essential if the Commission, as proposed above, shortens the timing provision for reviewing completed contacts from ''five business days'' to a bright line ''five days.''

f. Proposed Section 436.2(c): Form of the Disclosures

Proposed section 436.2(c) provides that it is a violation of section 5 of the FTC Act for a franchisor to fail to include the information and follow the instructions set forth in sections 436.3–436.8 of the Rule. It also clarifies the standard of liability for Rule violations. Currently, franchise brokers are jointly liable with the franchisor for the content of a disclosure document. Proposed section 436.2(c) makes clear that franchise sellers other than the franchisor will be liable for the content of a disclosure document only if they knew or should have known of the violation. This is consistent with the standard of individual liability for section 5 violations, as articulated by numerous courts since the Rule was promulgated in the 1970's.[80]

6. Proposed Section 436.3: The Cover Page

Proposed section 436.3 requires all franchisors to begin their disclosures with an FTC cover page that informs prospective franchisees that they are receiving important information about the franchise offering. The Commission proposes to modify the current cover page requirement, however, to address several suggestions raised in response to the ANPR. For example, a few franchisees and their supporters urge the Commission to require more background information on franchising, its risks, and applicable laws.[81] They also contend that phrases in the current cover page such as ''information * * * required by the Federal Trade Commission'' and ''to protect you'' are misleading because they imply greater federal oversight of franchise offerings than actually exists.[82] Several franchisors also urge the Commission to coordinate with the states to produce a single, uniform cover page,[83] and a few question the value of risk factors and whether the Commission could, as a practical matter, require the disclosure of risk factors on a national basis.[84]

The Commission agrees with those commenters who urge the Commission to promote greater uniformity with state disclosure laws. Accordingly, proposed section 436.3 includes the UFOC requirements that the cover page include, for example, the franchisor's name, logo, brief description of the franchised business, total purchase price, and a notice that comparative information is available. The Commission, however, is not inclined to adopt the UFOC's requirement that franchisors disclose specific risk factors on the cover page. First, the Commission notes that the two current UFOC mandated risk factors (choice of venue and law) merely repeat what is already required to be disclosed in the disclosure document itself.[85] Moreover, including these two risk factors in the FTC cover page might incorrectly signal prospective franchisees that these are the most important risk factors for

[78] Duvall, Comment 19, at 3; Baer, Comment 25, at 6; Tifford, 18 Sept. 97 Tr at 158–59.

[79] *E.g.*, Wieczorek, 6 Nov 97 Tr at 25–26.

[80] See *FTC* v. *Amy Travel Serv.*, 875 F.2d 564, 573 (7th Cir. 1989); *FTC* v. *Minuteman Press*, Bus. Franchise Guide (CCH) ¶ 11,516 at 31,253 (E.D.N.Y. 1998); *United States* v. *The Building Inspector of America*, 894 F. Supp. 507, 518–20 (D. Mass. 1995); *FTC* v. *Jordan Ashley*, Bus. Franchise Guide (CCH) ¶70,570 at 72,096 (S.D. Fla. 1994); *FTC* v. *Kitco of Nevada*, 612 F. Supp. 1282, 1292 (D. Minn. 1985); Under this standard, the Commission has brought numerous actions naming not only owners and corporate officers, but others who are instrumental in the fraud. *E.g.*, *FTC* v. *FutureNet, Inc.* No. 98–1113 GHK (AIJx) (C.D. Cal. 1998); *FTC* v. *Internet Bus. Broad., Inc.*, No. WMN–98–495 (D.Md. 1998); *United States* v. *Toys Unlimited Int'l, Inc.*, No. 97–08592 Highsmith (S.D. Fla. 1997); *FTC* v. *Audiotex Connections Inc.*, No. CV–97–726 (DRH) (VVP) (E.D.N.Y. 1997).

[81] Heron, Comment 80, at 1. See also G. Gaither, Comment 69, at 1; Dady & Garner, Comment 127, at 3.

[82] See Murphy, Comment 2 at 2; Maloney, Comment 38, at 1; Heron, Comment 80, at 1; Kezios, 18 Sept 97 Tr at 10; Karp, 19 Sept 97 Tr at 89–90.

[83] *E.g.*, Simon, 18 Sept 97 Tr. at 9; Kestenbaum, *id.* at 9–10; Cantone, *id.* at 10.

[84] Cendant, Comment 140, at 3; Forseth, 18 Sept 97 Tr at 11–12; Simon, *id.*, at 12–13, Kestenbaum, *id.*, at 12.

[85] For example, the choice of venue and choice of law disclosures repeat what is already disclosed in the text of Item 17.

consumers to consider. Second, as a practical matter, the Commission cannot formulate a list of specific risk factors that would be relevant to all franchise systems on a national basis, nor does the Commission have the ability to require risk disclosures on an individual franchise system basis. Nonetheless, the Commission recognizes that state franchise examiners may require franchisors to include various risk factors on the cover page and that such disclosures may serve a useful purpose. In an effort to harmonize federal and state disclosure laws, proposed section 436.3 makes clear that franchisors are permitted to include risk factors on the cover page, if they are required to do so under state law.[86]

Proposed section 436.3(b) also updates the current cover page provision to reflect the growing use of the Internet by franchisors. Accordingly, it requires franchisors to include their E-mail address and Internet home page, if applicable, on the cover page. This information should enable a prospective franchisee to communicate more readily with the franchisor. Proposed section 436.3(g)(2) also requires franchisors to include additional statements on the cover page if they wish to comply with the Rule electronically, such as the Internet. These requirements are explained more fully below at Section B.10.

Based upon the comments received, the Commission also proposes to include references to additional resources to enable prospective franchisees to conduct a due diligence investigation of the franchise offering. To that end, proposed section 436.3(g)(3) includes a reference to the Commission's home page[87] where consumers can find resources on franchising, and a reference to the Commission's Guide to Buying a Franchise.[88] In addition, proposed section 436.3(g)(4) adds new language to the cover page pointing out the difference between a disclosure document and a franchise agreement and stresses the need for prospective franchisees to understand their contract.[89]

Finally, proposed section 436.3 eliminates arguably misleading information from the current cover page, namely, the phrases ''information * * * required by the Federal Trade Commission'' and ''to protect you.'' To the extent that some prospective franchisees may misinterpret the phrase ''to protect you'' as implying a greater role on the Commission's part, the disadvantages of including such language would appear to outweigh any minimal benefit. Nonetheless, proposed section 436.3 retains the statement that the Commission has not checked the disclosures for accuracy. The Commission believes this statement is essential to warn prospective franchisees not to rely on the franchisor's disclosures at face value.

7. Proposed section 436.4: Table of Contents

Proposed section 436.4 sets forth a table of contents, which tracks the order of the required disclosures. For the most part, the proposed table of contents follows the text set forth in the UFOC Guidelines. The titles of four disclosure items, however, have been changed. The Commission believes that these changes better capture the essence of the respective disclosure provisions. First, Item 7 has been changed from ''Initial Investment'' to ''Estimated Initial Investment.'' Second, Item 11 has been changed from ''Franchisor's Obligations'' to ''Franchisor's Assistance, Advertising, Computer Systems, and Training.'' Third, Item 19 has been changed from ''Earnings Claims'' to the more inclusive term ''Financial Performance Representations.'' Finally, Item 20 has been changed from ''List of Outlets'' to ''Outlets and Franchisee Information.''

8. Proposed Section 436.5: The Required Disclosure Items

Proposed section 436.5 sets forth the required disclosure items. For the most part, these proposed disclosures are substantially similar to the disclosure requirements specified in the UFOC Guidelines. The Commission, however, believes it is important to retain a few current Rule disclosure provisions that are broader than the comparable UFOC provisions and to enhance the UFOC disclosures in a few instances based upon the record and the Commission's law enforcement experience.

a. Proposed Section 436.5(a): Item 1 (The Franchisor, Its Parent, Predecessors, and Affiliates)

Proposed section 436.5(a) is modeled after UFOC Item 1.[90] It requires the disclosure of background information on the franchisor, as well as its parent, predecessors, and affiliates. Proposed section 436.5(a) improves the comparable Rule disclosures currently found at 16 CFR 436.1(a)(1), (a)(3), and (a)(6) in three material respects. First, franchisors must disclose information about their predecessors. This provision is necessary to prevent franchisors from avoiding disclosure obligations by simply assuming a new corporate name.[91] Second, franchisors must disclose any regulations specific to the industry in which the franchise business operates, such as necessary licenses or permits, that may affect the franchisees' ability to conduct business as well as costs.[92] An explanatory footnote accompanies the Rule's text to help franchisors distinguish between general and industry-specific regulations. Third, franchisors must describe the general competition prospective franchisees are likely to face, which better ensures that prospective franchisees will understand the likely economic risks in purchasing a franchise. The Commission believes that a disclosure about likely competition is warranted in light of numerous franchisee complaints concerning competition issues.[93]

At the same time, proposed section 436.5(a) retains one feature of the current Rule, namely the disclosure of information about any parent of the franchisor. The Commission believes that information about a franchisor's parent may be highly material to a prospective franchisee. For example, a parent corporation may directly compete with the franchisees by offering franchises under a different trademark or by operating or acquiring a competing franchise system.[94] For this reason, the Commission decided to require the disclosure of information about a parent when it promulgated the Rule originally, even though it recognized

[86] See Tifford, 18 Sept 97 Tr at 15–16.

[87] See Heron, Comment 80, at 4.

[88] See Cordell, 6 Nov 97 Tr at 156.

[89] One commenter notes that only a minority of prospective franchisees use competent counsel before making an investment decision. He suggests that the Commission essentially require franchisees to seek professional guidance before making an investment decision. Murphy, Comment 2, at 1. The Commission believes such a regulation would be overly intrusive. Nonetheless, in keeping with Mr. Murphy's suggestion, the Commission proposes strengthening the cover page's consumer education message by replacing the current Rule language (''If possible, show * * *''), with the stronger ''Show your contract and this disclosure document to an advisor, like a lawyer or an accountant.''

[90] In response to the ANPR, no commenters raised any concerns about UFOC Item 1, upon which proposed section 436.5(a) is based.

[91] *E.g., FTC* v. *Wolf*, Bus. Franchise Guide (CCH) ¶ 10,401 (S.D. Fla. 1994); *FTC* v. *Inv. Dev., Inc.*, Bus. Franchise Guide (CCH) ¶ 9,326 (E.D. La 1989).

[92] *E.g., FTC* v. *Car Checkers of America, Inc.*, Bus. Franchise Guide (CCH) ¶ 10,163 (D.N.J. 1993); *U.S.* v. *Lifecall Sys.,Inc.*, Bus. Franchise Guide (CCH) ¶ 9,677 (D.N.J. 1990).

[93] *E.g.*, Packer, Comment 10, at 1; Manuszk, Comment 13, at 1; Gray, Comment 22, at 1; Lopez, Comment 123, at 1.

[94] See Vidulich, 22 Aug 97 Tr at 16–17.

that the UFOC Guidelines had no comparable disclosure requirement.[95]

b. Proposed Section 436.5(b): Item 2 (Business Experience)

Proposed section 436.5(b), another anti-fraud provision, requires a franchisor to disclose the business experience of the company's officers. The Commission has long recognized that the business experience of the franchisor and its officers is material because it provides the ''prospective franchisee with an important indication of the franchisor's competence and financial soundness.'' [96] Proposed section 436.5(b) is substantially similar to UFOC Item 2.[97] However, the Commission proposes to add a provision requiring franchisors to disclose the business experience of any director, trustee, general partner, officer, and subfranchisor of any parent who will have management responsibility relating to the offered franchises. The Commission believes that information about all persons having management responsibility is material to prospective franchisees, regardless of whether the officer is associated with the franchisor or the franchisor's parent.[98]

c. Proposed Section 436.5(c): Item 3 (Litigation)

Proposed section 436.5(c) is modeled after UFOC Item 3.[99] It is one of the most important anti-fraud disclosures, requiring franchisors to disclose certain material litigation involving the franchisor, its parent, predecessors, and officers.[100] Proposed section 436.5(c) improves the comparable Rule disclosures currently found at 16 CFR § 436.1(a)(4) in several material respects. First, it would require franchisors to disclose litigation involving predecessors for the first time. Second, it would require a franchisor to disclose civil actions, other than ordinary routine litigation, that may impact upon the franchisor's financial condition or ability to operate the business.[101] Following the UFOC approach, proposed section 436.5(c) also includes three instructional footnotes, the most important of which advises franchisors on how to disclose settlement agreements that may have confidentiality clauses (footnote 4).[102] The other footnotes clarify when franchisors must disclose dismissed civil actions (footnote 2) and the inclusion of summary opinions of counsel (footnote 3).

At the same time, the Commission proposes to enhance UFOC Item 3 by retaining the current Rule provision requiring the disclosure of litigation involving the franchisor's parent. In addition, the Commission would require franchisors to disclose pending franchisor-initiated law suits against franchisees on issues involving the franchise relationship. Currently, the Rule (and UFOC Guidelines) require franchisors to disclose only suits that franchisees have filed against the franchisor. A franchisor must disclose suits it has initiated only if the franchisee were to file a subsequent counterclaim.[103]

Based upon the record, the Commission finds that broader litigation disclosures are warranted to alert prospective franchisees to potential problems in the franchise relationship. In the ANPR, the Commission solicited comment on whether it should amend the Rule's litigation disclosures to require franchisors to disclose franchisor-initiated litigation in all instances.[104] Several commenters favor the ANPR proposal, asserting that franchisor-initiated litigation is material to prospective franchisees because it sheds light on problems in the franchise relationship, as well as the extent to which the franchisor is inclined to use litigation to resolve disputes.[105] Others oppose the ANPR proposal, maintaining that franchisor-initiated litigation is immaterial to prospective franchisees.[106] To the extent a franchisee is aggrieved by a franchisor-initiated suit, the franchisee, in their view, will surely file a counterclaim, which all agree must be disclosed under current law.[107] They also contend that litigation should be limited to suits that imply wrongdoing on the franchisor's part: franchisor-initiated suits simply demonstrate that the franchisor is enforcing its rights under the franchise agreement.[108] They fear that disclosing such litigation would have a negative connotation to prospective franchisees, implying some wrongdoing on the franchisor's part.[109] They also contend that an expanded Item 3 would ''bulk up'' disclosure documents, thereby increasing compliance costs.[110] One franchisor representative suggests that if the Commission were to require such a disclosure that it consider setting forth a threshold: a franchisor would not have to make the disclosure unless it has sued at least a certain percentage (*i.e.*, 5%) of the franchisees in its system.[111]

After carefully considering the ANPR comments, the Commission proposes to amend the UFOC Item 3 litigation

[95] SBP, 43 FR at 59639.

[96] SBP, 43 FR at 59640. See, *e.g.*, *FTC* v. *Car Checkers*, Bus. Franchise Guide (CCH) ¶ 10,163 at 24,043; *FTC* versus *Nat'l Consulting Group, Inc.*, Bus. Franchise Guide (CCH) ¶ 11,335 (N.D. Ill 1998); *FTC* v. *Levinger*, No. 94–0925–PHX RCB (D. Ariz. 1994). Cf. *FTC* v. *Goddard Rarities, Inc.*, No. CV93–4602–JMI (C.D. Cal. 1993).

[97] In response to the ANPR, no commenter raised any concerns about UFOC Item 2, upon which proposed section 436.5(b) is based.

[98] Cf. 16 CFR 436.1(a)(3).

[99] Only one commenter, Gary Duvall, criticizes the current UFOC Item 3 disclosure, upon which proposed section 436.5(c) is based. Among other things, Mr. Duvall suggests that franchisors should also be able to disclose cases that are resolved in their favor, noting that it might be difficult to distinguish between a dismissal without any liability from a settlement where both parties received some benefit. Duvall, Comment 19, at 1–2. In addition, he opposes the disclosure of confidential settlements, asserting that it ''discourages settlement of disputes, and thereby encourages prolonging of litigation and arbitration.'' Duvall, Comment 83, at 1. The Commission, however, finds that a franchisor can always err on the side of caution and disclose a suit if it is not sure whether or not it is covered by Item 3. In addition, nothing in the Rule would prohibit a franchisor from making any consistent, truthful information known to prospective franchisees outside of the disclosure document. The Commission further believes that confidential settlements provide prospective franchisees with material information needed to assess the franchise offering. Mr. Duvall has submitted no statistics or data to support his bald assertion that the required disclosure of confidential settlements causes harm. Accordingly, the Commission has no basis to conclude that the benefits of such disclosure are outweighed by any costs.

[100] See, *e.g.*, *FTC* v. *Inc. Dev., Inc.*, No. 89–0642 (E.D. La. 1989); *FTC* v. *Hayes*, No. 4:96CV06126SNL (E.D. Mo. 1996). See also Marks, 19 Sept 97 Tr at 8.

[101] This disclosure is entirely consistent with long-standing Commission policy that a franchisor's continued financial viability and ability to perform as promised is material to a potential investor. See, *e.g.*, SBP, 43 FR at 59650–51, and 59682.

[102] When NASAA revised the UFOC in 1993, it explained that all settlements must be disclosed, regardless of any confidentiality clause they may contain. Recognizing that franchisors may have contractual restrictions on disclosing the existence of confidential settlements, NASAA made the disclosure requirement prospective—only confidential settlements entered into after April 15, 1993, (the date NASAA approved the revised UFOC Guidelines) must be disclosed. Proposed footnote 4 makes clear that the Commission will follow the NASAA approach.

[103] See 16 CFR 436.1(a)(4)(ii)(B); UFOC, Item 3, A.

[104] 62 FR at 9120–21.

[105] SBA, Comment 36, at 4–5; AFA, Comment 62, at 2; IL AG, Comment 77, at 2; Lagarias, Comment 125, at 3; Selden, Comment 133, Appendix B, at 2; Karp, 19 Sept 97 Tr at 98.

[106] *E.g.*, Kaufmann, Comment 33, at 4.

[107] *E.g.*, Quizno's, Comment 16, at 1; Kaufmann, Comment 33, at 4; IFA, Comment 82, at 1–2; Cendant, Comment 140, at 3.

[108] *E.g.*, Kestenbaum, Comment 40, at 1; Tifford, Comment 78, at 3.

[109] *E.g*, Kaufmann, Comment 33, at 4; Tifford, Comment 78, at 3; Cendant, Comment 140, at 3. On the other hand, Carl Jeffers, a franchise consultant, suggests that the disclosure of franchisor-initiated suits could be viewed as a ''positive attribute,'' showing that the franchisor is willing to enforce its standards and trademark, and is willing to eliminate aggressively continuing violations of its franchise agreement. Jeffers, Comment 116, at 1–2.

[110] *E.g.*, Baer, Comment 25, at 3; Kaufmann, Comment 33, at 4. See also Forseth, 18 Sept 97 Tr at 20.

[111] Baer, Comment 25, at 3.

disclosures by requiring franchisors to disclose material information about pending franchisor-initiated litigation involving the franchise relationship. There is no doubt that a franchisor must disclose a franchisor-initiated lawsuit if a franchisee files a counterclaim. In many instances, however, franchisees do not have the financial resources to hire an attorney to initiate a suit or to pursue a counterclaim.[112] Therefore, the disclosure of litigation involving the franchise relationship should not depend upon which party happens to have the resources and the ability to file a law suit.

More important, the Commission is persuaded that franchisor-initiated suits may reveal material information to a prospective franchisee. For example, a franchisor may routinely file suit to collect royalties from franchisees. Such suits may show that franchisees are unwilling to pay royalties, or are having difficulty making their royalty payments. The royalty payments may be too high in light of franchisees' actual earnings, or the franchisees may be unsuccessful and cannot afford to pay the royalty fee. A pattern of such suits is highly material to a prospective franchisee because it is another source of information from which prospective franchisees can assess the quality of the relationship with the franchisor and likelihood of their own success. Moreover, as noted above, the overwhelming number of commenters who responded to the ANPR are current franchisees voicing various complaints about their relationship with the franchisor. These franchisees continue to argue for more substantive regulation of the franchise relationship. While the record does not support such a drastic expansion of the Franchise Rule by the Commission, it does support greater disclosure of suits initiated by franchisors against franchisees pertaining to the franchise relationship. Such disclosure no doubt would shed greater light on problems within a franchise system.

At the same time, the Commission shares the commenters' concerns that requiring additional disclosures may increase the costs and burdens of preparing a disclosure document. Therefore, the Commission proposes to limit the disclosure of franchisor-initiated litigation as follows. First, the proposed disclosure is limited to ''material'' franchisor-initiated law suits.[113] Arguably, an isolated suit against an individual franchisee might not be deemed material given the number of franchisees in the system. Second, the proposed disclosure is limited to suits involving the franchise relationship. Franchisors need not disclose suits they initiated against suppliers, advertisers, or other third parties.[114] Third, the proposed disclosure is limited to pending lawsuits: there is no requirement that franchisor-initiated suits be disclosed for a full 10 years, as franchisors must do for suits alleging, for example, fraud. The Commission believes that restricting the disclosure to pending lawsuits is a good compromise that would likely be sufficient to show a pattern of suits on the franchisor's part without ''bulking up'' the disclosure document and imposing undue compliance costs.

Finally, the Commission wishes to explore further the suggestion that a franchisor should be required to disclose franchisor-initiated litigation only if the franchisor has sued at least a certain percentage of franchisees in its system. At this time, however, the record is insufficient for the Commission to determine the merits of this suggestion. Accordingly, the Commission seeks comment on whether a franchisor-initiated litigation disclosure should be tied to a threshold and, if so, what threshold would be sufficient.

d. Proposed Section 436.5(d): Item 4 (Bankruptcy)

Proposed section 436.5(d) is substantially similar to UFOC Item 4.[115] It requires franchisors to disclose information about any prior bankruptcies. Proposed section 436.5(d) enhances the comparable Rule disclosures found at 16 C.F.R. § 436.1(a)(5) in two respects: (1) Franchisors would disclose bankruptcy information about their predecessors and affiliates; and (2) franchisors would make the disclosures for 10 years, instead of the current seven years. Proposed section 436.5(d) also clarifies that franchisors must disclose foreign proceedings comparable to bankruptcy. Proposed section 436.5(d) differs from the UFOC Guidelines, however, by retaining the Rule's current requirement that franchisors include information about a parent's prior bankruptcy.[116]

e. Proposed Section 436.5(e): Item 5 (Initial Franchise Fee)

Proposed section 436.5(e) begins a series of three disclosures concerning the total costs involved in purchasing and operating a franchise.[117] Modeled after UFOC Item 5, it requires franchisors to disclose information about the initial franchise fee, including whether such fees are refundable.[118] Proposed section 436.5(e) enhances the comparable Rule disclosures found at 16 CFR 436.1(a)(7) by enabling franchisors to provide a range of fees, instead of a fixed fee. Arguably, a franchisor who offers a franchise at a price that is not reflected in its disclosure document might violate the Rule because the seller has not provided the prospect with complete and accurate pre-sale disclosure of the price terms. In effect, proposed section 436.5(e) clarifies that franchisors can negotiate with a prospective franchisee over the initial franchise fee, without potentially violating the Rule.

f. Proposed Section 436.5(f): Item 6 (Recurring or Occasional Fees)

Proposed section 436.5(f), the second cost disclosure, is substantially similar to UFOC Item 6.[119] It requires franchisors to disclose recurring fees associated with operating a franchise (*e.g.*, royalties, advertising fees, and transfer fees). This disclosure recognizes that a prospective franchisee's investment is not limited to the initial franchise fee alone. Rather, a franchisee

[112] Peter Lagarias observes that ''[f]ranchisors are often able to wield the threat of litigation, especially by threatening to seek attorneys fees, to deter franchisees from suing or maintaining lawsuits against them. Thus, while loss of a single lawsuit is seldom significant to franchisors, loss of a lawsuit against their franchisor is often fatal for franchisees.'' Lagarias, Comment 125, at 3. See also Merret, Comment 126, at 1; Brandt, Comment 137, at 1; Doe, 7 Nov 97 Tr at 267.

[113] See Quinzo's, Comment 16, at 1.

[114] Cendant notes that in vicarious liability cases (where a customer sues the franchisor for alleged wrongdoings by the individual franchisee), the franchisor often must sue the franchisee to protect its interests and to obtain indemnification. Cendant believes that such suits are really between the customer and the franchisor and are not indicative of franchise system performance. Cendant, Comment 140, at 3. The Commission agrees. Accordingly, the proposed Item 3 disclosure would require franchisors to disclose only those suits they initiate against franchisees involving the franchise relationship. Most often, this would include suits for failure to pay royalties or to comply with operations standards. It would not extend to all suits filed by the franchisor against the franchisee, such as suits for indemnification for actions outside the franchise contract.

[115] In response to the ANPR, no commenter raised any concerns about UFOC Item 4, upon which proposed section 436.5(d) is based.

[116] See 16 CFR 436.1(a)(5).

[117] Pre-sale disclose of cost information is prevalent in Commission trade regulation rules. E.g., Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Act of 1992 (''900 Number Rule''), 16 CFR 308 at 308.3(b); Telemarketing Sales Rule, 16 CFR 310 at § 310.3; Funeral Industry Practices Rule, 16 CFR 453 at 453.2.

[118] In response to the ANPR, no commenter raised any concerns about UFOC Item 5, upon which proposed section 436.5(e) based.

[119] In response to the ANPR, no commenter raised any concerns about UFOC Item 6, upon which proposed section 436.5(f) is based.

may incur considerable costs in the operation of the business that will significantly impact upon his or her ability to continue operations and ultimately be successful.[120]

Consistent with the UFOC Guidelines approach, proposed section 436.5(f) enhances the comparable Rule disclosure provisions found at 16 CFR 436.1(a)(8) by adding a disclosure about advertising and purchasing cooperatives from which franchisees are required to purchase goods or services. The franchisor must also disclose the voting power of any company-owned outlets in the cooperative and, if company store voting power is controlling, the range of required fees charged by the cooperative must be disclosed. These additional disclosures better enable prospective franchisees to understand their total costs of conducting business.

g. Proposed Section 436.5(g): Item 7 (Estimated Initial Investment)

Proposed section 436.5(g), the third cost disclosure, requires franchisors to disclose additional expenses necessary to commence business (*e.g.*, rent, equipment, inventory) in an easy-to-read tabular format. It is based upon UFOC Item 7, which addresses fees paid to third parties.[121] Proposed section 436.5(g) enhances the comparable Rule disclosures found at 16 CFR 436.1(a)(7) by requiring franchisors to disclose ''additional funds'' required before operations begin and ''during the initial phase of the franchise.'' This information is essentially the same as a working capital disclosure. The UFOC defines the term ''initial phase'' to mean at least three months or a reasonable period for the industry. Franchisors must also identify the factors, basis, and experience they have considered in determining the level of additional funds. These disclosures assist prospective franchisees to understand not only the costs of entering into the business, but their likely operational costs until they can break even. These enhanced disclosures are entirely consistent with the Rule's general policy of requiring full cost and expense disclosures.

h. Proposed Section 436.5(h): Item 8 (Restrictions on Sources of Products and Services)

Proposed section 436.5(h) is one of several Rule provisions that require franchisors to state with specificity the legal obligations and restrictions imposed on the franchisee. Modeled after UFOC Item 8, it requires the franchisor to disclose obligatory purchases, restrictions on sources of products and services, the conditions under which the franchisor will approve alternative supplies or products, and the amount of any rebates the franchisor may receive from required suppliers. Proposed section 436.5(h) enhances the current Rule disclosures found at 16 CFR 436.1(a)(9)–(11) by requiring greater disclosure about the circumstances under which the franchisor will authorize substitute goods[122] and whether, by contract or practice, the franchisor provides material benefits to franchisees who use designated or approved suppliers, such as permitting renewals or providing additional outlets. It also requires the disclosure of purchasing or distribution cooperatives and whether the franchisor negotiates purchase arrangements with suppliers for the benefit of franchisees. These additional disclosures enable prospective franchisees to assess better their likely costs and benefits, as well as their independence from the franchisor.

In response to the ANPR, several commenters voice concern about source restrictions that prevent franchisees from obtaining comparable supplies at cheaper rates.[123] For example, one franchisee states that franchisors ''put you in an uncompetitive situation with other people in the same business because you are paying higher than fair market value for the price of the goods that you receive from them.''[124] These commenters generally do not allege that their franchisors failed to disclose source restrictions, but complain about the abusive nature of such restrictions. Other commenters, however, question the sufficiency of UFOC Item 8, urging the Commission to expand Item 8 to require franchisors to disclose more information about their practices and intentions with respect to the provision of competitive alternative sources of supply,[125] or to require franchisors to include a specific risk factor about sourcing restrictions in their Item 8 disclosure.[126]

The Commission believes that the ANPR comments clearly support the proposition that full disclosure about source restrictions and purchasing obligations is warranted. Nonetheless, the Commission believes that proposed section 436.5(h) strikes the right balance between pre-sale disclosure and compliance costs and burdens, and is sufficient to warn prospective franchisees about source restrictions, purchase obligations, and approval of alternative suppliers.

i. Proposed Section 436.5(i): Item 9 (Franchisee's Obligations)

Except for some minor editing, proposed section 436.5(i) is identical to UFOC Item 9.[127] There is no counterpart in the current Rule. Proposed section 436.5(i) requires franchisors to provide an easy-to-understand table that cross references the sections of the franchise agreement and disclosure document that explain the franchisee's legal obligations in greater detail.[128] The Commission finds that this proposed disclosure serves an important consumer protection function, giving prospective

[120] The failure to disclose all material ongoing costs involved in using a product or service is a violation of section 5. See, *e.g.*, *FTC* v. *Minuteman Press Int'l*, No. C–93–2496–DRH (E.D.N.Y. 1993); *FTC* v. *SureCheK Sys.* No. 1–97–CV–2015 (JTC) (N.D. Ga. 1997); In the Matter of Jenny Craig, 1998 FTC Lexis 13 (February 27, 1998); *FTC* v. *Design Travel*, No. C–97–0833 MHP (N.D. Cal. 1993); In the Matter of General Motors, 102 F.T.C. 1741 (1983). Proposed section 436.5(f) is also consistent with many Commission trade regulation rules that require sellers to disclose post-sale costs and conditions that will impact upon the consumer's ultimate cost in using the product or service. *E.g.*, Appliance Labeling Rule, 16 CFR 305 at 305.11; 900 Number Rule, 16 CFR 308 at 308.3; Telemarketing Sales Rule, 16 CFR 310 at 310.3.

[121] In response to the ANPR, no commenter raised any concerns about UFOC Item 7, upon which proposed section 436.5(g) is based.

[122] In response to the ANPR, a few franchisees reported that their franchisors failed to approve alternative suppliers or made it difficult for franchisees to find alternative sources of supplies. *E.g.*, Chiodo, 21 Nov 97 Tr at 308–09; Hockert-Lotz, *id* at 325–327.

[123] *E.g.*, Manuszak, Comment 13, at 1; Weaver, Comment 17, at 1; Mueller, Comment 29, at 2; Gagliati, Comment 72, at 1; Buckley, Comment 97, at 1; Rafizadeh, 7 Nov 97 Tr at 288–89; Slimak, 22 Aug 97 Tr at 26. See also Kezios, Comment 64, at 2–3.

[124] Brickner, Comment 128. Brickner adds that he also must purchase specific equipment from only one manufacturer and the franchisor is the only supplier. *Id*. See also Buckley, Comment 97 at 3; Myklebust, Comment 101; Chiodo, 21 Nov 97 Tr at 293–94.

[125] Selden, Comment 133, Appendix B, at 1.

[126] Zarco, Comment 134, at 2. Harold Brown, a franchisee advocate, also urges the Commission to prohibit direct and indirect ''kick-backs'' from third-party vendors to the franchisor. Brown, Comment 4 at 3. The Commission, however, believes that proposed section 436.5(h)(5), requiring the disclosure of revenue to the franchisor from franchisee purchases, is sufficient to address this issue.

[127] Only one commenter, Gary Duvall, raises any concern about UFOC Item 9, upon which proposed section 436.5(i) is based. Mr. Duvall suggests that the Commission permit a franchisor to opt out of Item 9 if the franchisor provides prospective franchisees with a detailed table of contents or index to their franchise agreement. Duvall, comment 19, at 2. In an effort to harmonize federal and state disclosure laws, however, the Commission is inclined to adopt UFOC Item 9 in its entirety.

[128] Proposed section 436.5(i) is consistent with other trade regulation rules where the Commission has recognized that information about legal risks to consumers is material. *E.g.*, 900 Number Rule, 16 CFR 308 at 308.7 (obligations concerning billing disputes); Negative Option Rule, 16 CFR 425 at 425.1(a)(1)(ii) (minimum purchase obligations); Door-to-Door Sales Rule, 16 CFR 429 at 429.1(e) (obligations regarding cancellations); Warranty Disclosures, 16 CFR 701 at 701.3(a)(5) (obligations to obtain performance).

franchisees an easy-to-understand roadmap to their franchise agreement and disclosure document, without imposing great compliance costs or burdens on franchisors. In addition, the significant number of comments detailing franchise relationship problems would tend to support the need to provide prospective franchisees with more guidance in understanding and reviewing a franchise agreement.

j. Proposed Section 436.5(j): Item 10 (Financing)

Proposed section 436.5(j) requires the franchisor to disclose all the material terms and conditions of any financing agreements, including the annual percentage rate, the number of payments, penalties upon default, and any consideration received by the franchisor for referring a prospective franchisee to a lender. For the most part, these disclosures are comparable to the disclosures lenders must make under the Federal Reserve's Regulation M (Consumer Leasing), 12 CFR 213, and Regulation Z (Truth in Lending), 12 CFR 226. Based upon UFOC Item 10,[129] proposed section 436.5(j) enhances the current Rule disclosures found at 16 CFR 436.1(a)(12) by requiring franchisors to disclose any interest on the financing in terms of an Annual Percentage Rate, consistent with other consumer credit transactions. It also requires more disclosure about what the financing covers, waiver of defenses, and the franchisor's practice or intent to sell or assign the obligation to a third party. Proposed section 436.5(j) also makes clear that the franchisor may provide this information in summary table format, and Appendix A to the proposed Rule offers a sample table.

k. Proposed Section 436.5(k): Item 11 (Franchisor's Assistance, Advertising, Computer Systems, and Training)

Proposed section 436.5(k) requires franchisors to disclose their obligations to franchisees with respect to pre-opening and ongoing assistance (such as site selection, training, and advertising) in tabular form, with cross references to the corresponding provisions of the franchise contract.[130] It expands the comparable Rule provisions found at 16 CFR 436.1(a)(17)–(18) by requiring franchisors to explain in greater detail their site selection criteria and the nature of their training program. It also requires additional disclosures concerning the extent of advertising assistance and the operation of local, regional, and national advertising co-ops. Proposed section 436.5(k) also addresses major technological changes in franchising since the Rule was promulgated in the late 1970s. Specifically, it requires greater disclosure about the required use of computers and electronic cash registers.[131] The Commission believes that these disclosures are necessary to address frequent franchisee complaints about promised assistance and related obligations. Each of these expanded disclosures sheds greater light on the level of services and assistance promised to prospective franchisees, as well as related franchisee obligations, and therefore are material. The pre-sale disclosure of this information to prospective franchisees is also likely to reduce misunderstandings and conflict during the franchise relationship.

Two commenters, however, question the sufficiency of UFOC Item 11, upon which proposed section 436.5(k) is based. One franchisee advocate contends that the UFOC Item 11's short-hand references to the franchise contract ''offend[s] the basic purpose of the disclosure statement, namely, to provide the prospective franchisee with a reliably complete description of what is being purchased.'' [132] He urges the Commission to require a franchisor to provide prospects with a more in-depth analysis of each of the franchisor's obligations. A franchisor representative raises a concern about the disclosures concerning computer systems. UFOC Item 11, and by extension proposed section 436.5(k), require franchisors to disclose information about the nature of their computer systems and any assistance available to franchisees concerning such systems. This commenter does not disagree with the need for the disclosure, but notes that many start-up franchisors are ''not certain which computer system or software they expect to have the franchisees use. Provision should be made for these new franchisors.'' [133]

In light of the overwhelming number of comments urging the Commission to adopt the UFOC format, the Commission finds no compelling justification to expand Item 11, as suggested above. Requiring franchisors to repeat in the disclosure document what they already disclose in their contract would appear to impose costs on franchisors without any clear benefit to prospective franchisees. Multiple disclosure might greatly increase the size of a disclosure document, making it more daunting to read. The Commission, however, is concerned that the UFOC Item 11 disclosures concerning computer systems may not provide adequate guidance to start-up franchisors. Specifically, a start-up franchisor may require franchisees to use computer systems in the future, but may not have the specific computer requirements available at the time of the franchise sale. Based upon the record, the Commission cannot assess the extent to which proposed section 436.5(k) may impose undue costs or burdens on, or otherwise disadvantage, start-up franchise systems. Accordingly, the Commission solicits additional comment on this issue.

l. Proposed Section 436.5(l): Item 12 (Territory)

Proposed section 436.5(l) addresses exclusive territories, as well as competition from franchisors selling similar goods or services under the same or a different trade name. The Commission believes this provision is one of the most important disclosure items, preventing fraud and misleading statements concerning protected territories and competition. Indeed, the Commission has brought a number of law enforcement actions against false or misleading exclusive territory representations.[134] Proposed section 436.5(l) enhances the current Rule's disclosures found at 16 CFR 436.1(a)(3)–(13) in several respects, including requiring franchisors to disclose the conditions, if any, under which they will approve the relocation of the franchisee's business and the franchisee's establishment of additional

[129] As with most of the other disclosures, no commenters raised any objections to UFOC Item 10, upon which proposed section 436.5(j) is based.

[130] Misrepresentations about promised support and assistance are among the most common allegations in franchise cases and continue to be a source of numerous franchisee complaints. *E.G., FTC* v. *Nat'l Consulting Group, Inc.,* No. 98 C 0144 (N.D. Ill 1998); *FTC* v. *Hayes,* No. 4:96CV061126 SNL (E.D. Mo. 1996); *FTC* v. *Int'l Computer Concepts, Inc.,* No. 1:94CV1678 (N.D. Ohio 1994); *United States* v. *Megatrend Telecomm., Inc.,* No. 3:93 CV 22220 AVC (D.Ct. 1993); *FTC* v. *Intellipay, Inc.,* Bus. Franchise Guide (CCH) ¶ 10,061 (S.C. Tx. 1992); *FTC* v. *Blanc,* Bus. Franchise Guide (CCH) ¶ 10,032 (N.D. Ga 1992). See also Lundquist 22 Aug 97 Tr at 45; Gray, comment 22, at 1; Dady & Garner, Comment 127, at 4; Mousley, 29 July 97 Tr at 4–7.

[131] In response to the ANPR, a few commenters voiced concerns about maintenance obligations regarding computer systems and related equipment. *E.g.* Fetzer, 19 Sept 97 Tr at 42; Rafizadeh, 7 Nov 97 Tr at 292. See also NCA–7 Eleven Franchisees, Comment 113, at 2.

[132] Brown, comment 4, at 5.

[133] Kestenbaum, Comment 40, at 2.

[134] *E.g., FTC* v. *Int'l Computer Concepts, Inc.,* No. 1:94CV1678 (N.D. Ohio 1994); *FTC* v. *O'Rourke,* No. 93–6511 (S.D. Fla. 1993); *FTC* v. *Nat'l Bus. Consultants, Inc.,* Bus. Franchise Guide (CCH) ¶ 9,365 (E.D. La. 1989); *FTC* v. *American Safe Mktg., Inc.,* Bus. Franchise Guide (CCH) ¶ 9,350 (N.D. Ga. 1989); *FTC* v. *American Legal Distrib., Inc.,* Bus. Franchise Guide (CCH) ¶ 9,090 (N.D. Ga. 1988); *United States* v. *C.D. Control Tech., Inc.,* Bus. Franchise Guide (CCH) ¶ 9,851 (E.D.N.Y. 1985).

outlets. Franchisors must also disclose any present plans to operate a competing franchise system offering similar goods or services or to sell through alternative channels of distribution.

Unlike most disclosure items—which generated little comment in response to the ANPR—UFOC Item 12 generated a significant number of comments. In particular, franchisees and their advocates complain about ''encroachment,'' where a franchisor essentially competes with its franchisees by establishing company-owned or new franchised-outlets in the same market, or sells the same goods as the franchisee through alternative channels of distribution.[135] These commenters contend that encroachment has a devastating effect upon an individual franchisee who does not have a contractual right to an exclusive territory,[136] and they urge the Commission to ban encroachment as an abusive and unfair practice. Other commenters urge the Commission at the very least to expand the disclosures about territories to include more information about the franchisor's past practices and specific expansion plans.[137] Finally, several franchisees suggest that the Commission should strengthen the UFOC's ''encroachment'' risk factor. For example, one commenter suggests that franchisors should be required to state: ''The company reserves the right to increase the number of franchised or company-owned units in an area. In the past, we have been known to put another outlet in close proximity to an existing unit. This action generally has a negative impact on the gross and/or net sales of the pre-existing unit.'' [138]

The Commission believes that proposed section 436.5(l) strikes the appropriate balance, ensuring that prospective franchisees will receive material information about the extent to which they will receive a protected territory and/or are likely to face competition from the franchisor. Disclosure about a franchisor's past practices and future policies, however, appears to be unwarranted. A franchisor's past policies and practices regarding territories and means of distribution are arguably irrelevant because they do not necessarily shed any light on the franchisor's practices that will govern a particular franchise relationship.[139] In the same vein, a franchisor's expansion policies in one location may be irrelevant to a prospective franchisee who intends to operate his or her outlet in another. Moreover, prospective franchisees may be able to discover past practices on their own by speaking with current and former franchisees.

The Commission also believes it is unreasonable to require franchisors to disclose hypothetical possibilities about future expansion. Indeed, by not granting an exclusive territory, the franchisor has effectively reserved to itself the unrestricted right to expand the number of outlets or to sell its products or services via alternative channels of distribution. For that reason, proposed section 436.5(l) provides that franchisors not offering exclusive territories must state: ''You will not receive an exclusive territory. [Franchisor] may establish other franchised or company owned outlets that may compete with your location.'' Although the Commission generally disfavors the use of risk factors that merely repeat what is expressly or impliedly stated in the franchise agreement, the Commission agrees that the disclosure of this specific risk factor is warranted in light of the considerable number of franchisee complaints regarding encroachment. Armed with such information, prospective franchisees can shop for a competing franchise system that does offer protected territories, if they so choose.

m. Proposed Section 436.5(m): Item 13 (Trademarks)

Proposed section 436.5(m) is intended to be identical to UFOC Item 13. It requires franchisors to disclose information about the principal trademarks that will be licensed to the franchisee for use in operating the outlet.[140] This is an anti-fraud provision, ensuring that franchisors do not misrepresent the value of the trademark underlying the franchise system.

The current Rule provision addressing trademarks, section 436.1(a)(iii), merely requires the franchisor to identify its trademarks. Following UFOC Item 13, proposed section 436.5(m) enhances the current Rule requirements by requiring more detailed disclosures, including whether the trademark is registered with the U.S. Patent & Trademark Office,[141] and the existence of any pending litigation, settlements, agreements, or superior rights that may limit the franchisee's use of the trademark. Proposed section 436.5(m) also explains the franchisor's contractual obligations to protect the franchisee's right to use the mark against claims of infringement or unfair competition. These additional disclosures are entirely consistent with the Commission's long-standing policy of requiring the disclosure of material information about the costs and benefits of entering into the franchise relationship.

n. Proposed Section 436.5(n): Item 14 (Patents, Copyrights, Proprietary Information)

Proposed section 436.5(n) is intended to be identical to UFOC Item 14.[142] It is another anti-fraud provision, ensuring that franchisors do not misrepresent the nature of their intellectual property, such as secret recipes or manufacturing processes, the existence of which often makes the purchase of a franchise an attractive option, especially to consumers without prior business experience. Like trademark limitations, restrictions on the use of the franchisor's intellectual property are material because they not only can seriously diminish the value of the franchise, but could undermine the franchisee's ability to operate the business. No comparable provision is found in the current Rule. In keeping with the goal of reducing inconsistencies between federal and state disclosure law, the Commission

[135] *E.g.*, Brown, Comment 4, at 2; Manuszak, Comment 13, at 1; AFA, Comment 62, at 1; Orzano, Comment 73, at 1; Buckley, Comment 97, at 3; Marks, Comment 107, at 2; Zarco & Pardo, Comment 134, at 2.

[136] *E.g.*, Parker, Comment 10, at 1; L. Gaither, Comment 68, at 1; Vidulich, 22 Aug 97 Tr at 17; Christiano, 19 Sept 97 Tr. at 50; Bundy, 6 Nov 97 Tr at 135.

[137] For example, Andrew Selden suggests that ''Item 12 should be elaborated to require full disclosure of past practice, current intention or future possibility of franchisor-sponsored competitive activities that have the prospect of impacting the franchisee's business.'' Seldon, Comment 133, Appendix B, at 1. See also, Dady & Garner, Comment 127, at 4.

[138] Zarco & Pardo, Comment 134, at 2. See also G. Gaither, Comment 69, at 1; Orzano, Comment 73, at 1; Dady & Garner, Comment 127, at 3; Cordell, 6 Nov 97 Tr at 136; Kezios, 6 Nov 97 Tr at 142.

[139] The Commission believes that the issue of encroachment is essentially a contractual matter. Absent an express grant of a protected territory, a franchisor is generally free to establish as many outlets (company-owned or franchised) in any particular market as it wishes. A few state courts (or federal courts applying state law), however, have held that encroachment violates state implied covenants of good faith and fair dealing. See, *e.g.*, In re Vylene Enter., Inc., 90 F.3d. 1472 (9th Cir. 1996).

[140] In response to the ANPR, no commenter raised any concerns about UFOC Item 13, upon which proposed section 436.5(m) is based.

[141] If the mark is not registered, the franchisor must provide the following warning: ''By not having a Principal Register federal registration for (name or description of symbol), (Name of Franchisor) does not have certain presumptive legal rights granted by a registration.''

[142] In response to the ANPR, no commenter raised any concerns about UFOC Item 14, upon which proposed section 436.5(n) is based.

believes that adopting UFOC Item 14 is warranted.[143]

o. Proposed Section 436.5(o): Item 15 (Obligation To Participate in the Actual Operation of the Franchise Business)

Proposed section 436.5(o) is intended to be identical to UFOC Item 15.[144] It requires franchisors to disclose whether franchisees must participate personally in the direct operation of the franchise.[145] Proposed section 436.5(o) enhances the current Rule disclosures found at 16 CFR 436.1(a)(14), however, in several respects. It requires franchisors to disclose not only obligations under the franchise agreement, but obligations to participate directly arising from other agreements or as a matter of practice. Franchisors must also state if direct participation is recommended. Proposed section 436.5(o) also requires franchisors to disclose any limitations on whom the franchisee can hire as a supervisor and any restrictions that the franchisee must place on its manager. If the franchise is a business entity, the franchisor must also disclose the amount of equity interest that the supervisor must have in the franchise. Armed with such disclosures, prospective franchisees will have a much better understanding of the personal commitment required to operate the franchise.

p. Proposed Section 436.5(p): Item 16 (Sales Restrictions)

Proposed section 436.5(p) is intended to be identical to UFOC Item 16.[146] Like other Rule provisions governing a franchisee's method of operation, it requires a franchisor to disclose any restrictions limiting customers to whom the franchisee is permitted to sell, or the goods or services that the franchisee may offer for sale.[147] Proposed section 436.5(p) enhances the current Rule disclosures found at 16 CFR 436.1(a)(13) by also requiring the franchisor to disclose whether the franchisor has the right to change the types of authorized goods and services and whether there are limits on the franchisor's right to make such changes. These disclosures will better enable a prospective franchisee to understand the scope of the franchisor's contractual rights regarding product sales.

q. Proposed Section 436.5(q): Item 17 (Renewal, Termination, Transfer, and Dispute Resolution)

Proposed section 436.5(q) is intended to be identical to UFOC Item 17. It requires franchisors to summarize in tabular form 23 enumerated terms and conditions of a typical franchise relationship, such as the duration of the franchise agreement, rights and obligations upon termination, post-term covenants not to compete, and assignment and transfer rights.[148]

Proposed section 436.5(q) enhances the current Rule disclosures found at 16 CFR 436.1(a)(15) by requiring disclosures about arbitration or mediation of disputes, as well as forum-selection and choice of law provisions. At the same time, it greatly streamlines the Rule's disclosures. The Rule currently requires franchisors to detail the rights and obligations already spelled out in the franchise agreement. Proposed section 436.5(q), in contrast, requires franchisors to cross reference the applicable contractual provisions in an easy-to-read table with only a brief summary of each provision. This streamlined approach reduces compliance burdens, while providing prospective franchisees with a detailed road map to the contract, where they can read the various provisions in greater detail.

In response to the ANPR, a few commenters offer specific suggestions about UFOC Item 17, upon which proposed section 436.5(q) is based. One commenter questions whether the Item 17 disclosure is necessary in the first instance, suggesting that a franchisor be permitted to opt out of Item 17, if it provides a detailed table of contents or index to its franchise agreement.[149] In addition, several franchisees and their representatives state that the term ''renewal'' in Item 17 is misleading. They maintain that the word ''renew'' implies that the franchisee is able to continue to operate the franchise under substantially similar terms and conditions as under the original franchise agreement. They assert, however, that in reality franchisees who wish to continue operating the franchise upon expiration must often sign radically new contracts that impose substantially different terms and conditions, such as higher royalty payments or the elimination of an exclusive territory. Further, they assert that, in many instances, franchisees have no choice but to sign even the most abusive, one-sided contracts because the franchisee has a substantial economic investment in the franchise and simply cannot walk away from it without incurring a significant economic loss.[150] Franchisees also note that if they do walk away from the franchise, they are often bound by covenants not to compete that restrict their ability to operate a similar business for a number of years.[151]

As noted previously, the overwhelming number of ANPR comments were submitted by franchisees who voice various franchise relationship concerns.[152] The stream of franchisee complaints about relationship issues demonstrates that there is a continuing need for complete

[143] Proposed section 436.5(n) is substantially similar to other required disclosures. It complements Item 13, which requires the disclosure of information about the franchisor's trademark, and it parallels Item 3, which requires the disclosure of certain litigation.

[144] In response to the ANPR, no commenter raised any concerns about UFOC Item 15, upon which proposed section 436.5(o) is based.

[145] This requirement is consistent with the Commission's long-standing view that prospective franchisees should be able to assess their legal obligations under the franchise agreement, as well as the degree of independence they will be able to exercise in operating their business. SBP, 43 FR at 59662–63. Personal participation requirements might also result in economic injury to franchisees who, under their franchise agreement, are restricted from engaging in other businesses or who have signed covenants not to compete in the same business. *Id.*

[146] In response to the ANPR, no commenters raised any concerns about UFOC Item 16, upon which proposed section 436.5(p) is based.

[147] Sales restrictions can cause serious economic injury to franchisees by limiting the scope of the franchisee's market and ultimately the franchisee's profitability. SBP, 43 FR at 59661. Comparable disclosures about the terms, conditions, and restrictions on the use of goods and services are found in many Commission rules. *E.g.*, Telemarketing Sales Rule, 16 CFR 310 at 310.3; Negative Option Rule, 16 CFR 425 at 425.1(a)(1)(ii); Disclosure of Warranty Terms and Conditions, 16 CFR 701 at 701.3(a)(8).

[148] The Commission has recognized that the terms and conditions governing the franchise relationship ''may well be the most important provisions in a franchise agreement, since they limit what the franchisee may do with his capital asset.'' Given the length and complexity of the typical franchise agreement, such terms and conditions are often overlooked or not fully appreciated. The Commission has also recognized that there is often an informational imbalance between franchisors and franchisees about the relationship. ''This information imbalance makes the clear and concise disclosure [about franchise relationship issues] essential, if a prospective franchisee is to make an informed business judgment.'' SBP, 43 FR at 59664.

[149] Duvall, Comment 19, at 2.

[150] *E.g.*, Bores, Comment 9, at 1; Rachide, Comment 32, at 1; Chabot, Comment 37, at 1; Rich, Comment 65, at 1; Orzano, Comment 73, at 1; Geiderman, Comment 131, at 1; Vidulich, 22 Aug 97 Tr at 19–20; D'Alessandro, 22 Aug 97 Tr at 41; Chiodo, 21 Nov 97 Tr at 303–04.

[151] For example, the AFA states:

''Renewal'' is a misnomer. ''Re-license,'' ''rewrite'' or even ''re-franchise'' is a more accurate description of what actually happens at the end of the initial contract term. Most franchisees find that when it is time to ''renew,'' they are not ''renewing'' their existing franchise agreement, but are entering into a wholly new franchise agreement, often with materially different financial and operational terms. They are presented these ''renewal'' contracts on a ''take it or leave it'' basis and are under enormous coercion pressures to sign—especially if the old agreement contains a post-termination covenant not to compete. This is truly ''holding a gun to the head'' of the ''renewing'' franchisee.

AFA, Comment 62, at 2.

[152] See *supra* at Section B.

and clear disclosure about the basic contractual terms and conditions that will govern the franchise relationship. In an effort to harmonize federal and state disclosure laws, the Commission is inclined to adopt UFOC Item 17 as set forth in the UFOC Guidelines. Nonetheless, the Commission wishes to explore further whether the use of the term ''renewal'' is misleading. On the one hand, ''renewal'' appears to be a term of art that is well understood in franchising to mean that the parties enter into a new contract. Indeed, UFOC Item 17 specifically distinguishes between renewals and extensions. Although not defined in the Rule, the term ''extension'' implies that a franchisee can continue to operate under the same terms and conditions for an additional period. In contrast, it would appear that a ''renewal'' means that the franchisee may continue in operation, but under modified conditions. Given the number of comments on this issue, however, the Commission wishes to explore further whether the term ''renewal'' is misleading and possible alternatives that would be more useful.

r. Proposed Section 436.5(r): Item 18 (Public Figures)

Proposed section 436.5(r) is intended to be identical to UFOC Item 18.[153] It requires franchisors to disclose the involvement of a public figure in the franchise system, including any management responsibilities, the total investment made in the franchise system, and any compensation received. A comparable disclosure provision is currently found at 16 CFR 436.1(a)(19). This information helps prospective franchisees understand the extent of any financial and managerial commitments from the public figure, as well as any obligations to the public figure. Prospective franchisees can then decide for themselves whether an association with a public figure is valuable to them.[154]

s. Proposed Section 436.5(s): Item 19 (Financial Performance Representations)

Background. Proposed section 436.5(s), perhaps the most important anti-fraud provision, addresses financial performance representations. In the original rulemaking record developed in the 1970s, the Commission found ''that franchises have been marketed through * * * unsubstantiated claims regarding potential sales, income, [and] gross or net profit of franchises.'' [155] The Commission's law enforcement experience shows that the making of false or unsubstantiated earnings representations continues to be prevalent. Indeed, the making of false or unsubstantiated earnings representations is the most frequent count alleged in Commission Franchise Rule cases. Of the more than 150 Rule cases filed to date, all but three allege false or unsubstantiated earnings claims.[156]

Although financial performance representations are highly material to prospective franchisees, the Commission stated in the ANPR that it was inclined not to mandate earnings disclosures.[157] After reviewing the Rule Review comments, the Commission acknowledged that financial performance information is material to prospective franchisees, but rejected mandating such disclosures in favor of a free market approach. The Commission noted that approximately 20 percent of franchisors choose to make earnings disclosures and that prospects, in theory, can find franchise systems that voluntarily disclose earnings information. Moreover, the Commission observed that prospective franchisees can obtain earnings information from a variety of sources. ''For example, typical expenses, such as labor and rent, may be available from industry trade associations and industry trade press.'' 62 FR 9118. Prospective franchisees are also free to discuss earnings and other performance issues with former and current franchisees. Perhaps most important, the Commission noted that the record does not provide a sufficient basis for the Commission to formulate an earnings disclosure that would both be useful to and not mislead prospective franchisees. The Commission also noted that mandating earnings disclosures might impose burdens and costs on existing franchisees (who would have to release their earnings information to their franchisor) without any record support showing that such increased burdens and costs are outweighed by benefits to prospective franchisees. [158]

While rejecting mandated financial performance disclosures, the ANPR explored whether the Commission should nonetheless revise the Rule's performance disclosure requirements in two respects. First, the Commission observed that some franchisors actually misrepresent that the Commission or the Franchise Rule prohibits franchisors from making performance information available.[159] Second, the Commission questioned whether prospective franchisees should be cautioned not to rely on unsubstantiated earnings representations.[160] Accordingly, the Commission solicited comment on whether the Rule should be modified to require all franchisors to provide specified preambles to their Item 19 disclosure that would explain financial performance representations in greater detail.[161] The prescribed preamble would make it clear that franchisors can make earnings disclosures if they have a reasonable basis to do so. At the same time, it would discourage prospects from relying on unauthorized earnings information.[162]

In general, no new arguments were raised in response to the ANPR either supporting or opposing mandatory earnings disclosures. Franchisees and their allies continue to argue that earnings information is material, that mandating earnings disclosures will curb deceptive or false earnings claims already being made, and that it is a material omission for franchisors to fail to disclose earnings information they possess.[163] They also contend that prospects need historical earnings information in order to conduct a due diligence investigation of the franchise offering.[164] On the other hand,

[153] In response to the ANPR, no commenter raised any concerns about UFOC Item 18, upon which proposed section 436.5(r) is based.

[154] See SBP, 43 FR at 59677–78.

[155] Final Interpretive Guides, 43 FR at 59628.

[156] *E.g., FTC* v. *GreenHorse Communications, Inc.*, No. 98–CV–245–M (D.N.H. 1998); *FTC* v. *Nat'l Consulting Group, Inc.*, No. 98–C 0144 (N.D. Ill. 1988); *FTC* v. *Hart Mktg. Enter., Ltd.*, No. 98–22–CIV–T–23E (M.D. Fla. 1988); *FTC* v. *Shelton*, No. CV–N–97–00712–ECR (RAM)(D. Nev. 1997); *FTC* v. *Hayes*, No. 4:96CV06126 SNL (E.D. Mo. 1997); *FTC* v. *Tower Cleaning Sys., Inc.*, No. 96 58 44 (M.D. Pa. 1996).

[157] 62 FR at 9118.

[158] *Id.*

[159] *Id.*

[160] *Id.*

[161] The ANPR proposed that all franchisors state the following in their Item 19 disclosure:

The FTC's Franchise Rule permits a franchisor to provide you with information about the actual or potential sales, income, or profits of its outlets, provided that there is a reasonable basis for such information and the franchisor offers to provide you with written substantiation. You should not rely on any information on sales, income, or profits provided by a franchisor or its salespersons if written substantiation is not offered.

Franchisors who do not make earnings disclosures would add the following additional statement:

This franchisor does not make any representations about sales, income, or profits. We also do not authorize our salespersons to make any such representations either orally or in writing.

Id. at 9121–22.

[162] *Id.* at 9119.

[163] *E.g.*, Brown, Comment 4, at 4; SBA Advocacy, Comment 36, at 8; AFA, Comment 62 at 4; Purvin, Comment 79, at 2; Lagarias, Comment 125, at 1–2; Dady & Garner, Comment 127, at 1–2; and Selden, Comment 133, at 2 and Appendix C; Lundquist, 22 Aug 97 Tr at 46–47.

[164] *E.g.*, Karp, 19 Sept 97 Tr at 100–01. Quoting several business texts, Mr. Karp asserts that

Continued

franchisors and their allies continue to oppose mandatory earnings disclosures, maintaining that earnings information obtained from franchisees is often unavailable or unreliable, that mandating the disclosure of earnings information will increase litigation, and that prospects can often obtain earnings information directly from current and former franchisees.[165] In addition, a few commenters urge the Commission to coordinate its policy with NASAA to promote uniformity between federal and state disclosure laws.[166] One franchisor suggests that the FTC prohibit states from mandating earnings disclosures by preempting the field.[167]

At the same time, several commenters support the ANPR proposed preambles as an alternative to mandating earnings disclosures, noting that this approach would rely on market pressures, not government mandates, to encourage franchisors to disclose earnings information voluntarily. For example, one commenter states:

> We believe that these required disclosures not only would correct misrepresentations by franchisors that the Rule prevents them from making earnings claims, but also would bring more market pressure to bear on franchisors to make reliable earnings claims. Such market pressures may result in a substantial increase in the amount of financial information disclosed to franchisees without the costs and other burdens attendant to a government mandate.

Hogan & Hartson, Comment 28, at 8.[168]

A few commenters, however, offer specific suggestions to improve the proposed preambles. For example, some commenters voice concern that phrases such as ''do not rely on'' unauthorized earnings information may be misinterpreted as a disclaimer of liability where salespeople routinely make false or unauthorized earnings claims.[169] Another commenter voices concern that the first preamble proposed in the ANPR could be misinterpreted as enabling franchisors to provide earnings information outside of the disclosure document, as long as the franchisor followed the Rule's requirements.[170] Several commenters also offer substitute language. For example, one commenter notes that some industries—such as the hotel industry—do not use sales, income, or profits as measures of performance.[171] He suggests that the preamble include the more inclusive term ''financial performance'' to capture those industries. Another commenter recommends that the term ''outlets'' be revised to make it clear that a financial performance claim can be based on either company-owned or franchised outlets.[172] A few commenters also suggest that the Commission add a provision stating that prospective franchisees should report any unauthorized financial performance claims to the franchisor and/or to the Federal Trade Commission and to state authorities.[173] Finally, NASAA suggests that the Commission require franchisors who choose not to make earnings disclosures to make the following statement:

> This information is very important to any prospective franchisee, and our failure to provide it makes it more difficult for you to make an informed decision about purchasing a franchise, as well as increases your financial risks in purchasing a franchise from us. Unless you obtain this type of information on your own, your risks may be substantial.

NASAA, Comment 120 at 8.[174]

Revised Financial Performance Disclosures. Based upon the record, the Commission continues to believe that financial performance disclosures should remain voluntary and that ordinary market forces are sufficient to provide an incentive for franchise systems to make performance information available to prospective franchisees.[175] At the same time, the Commission proposes to amend the Rule by adopting the greatly streamlined UFOC Item 19 approach toward financial performance representations. First, following the UFOC Guidelines, proposed section 436.5(s) would permit franchisors to make financial performance claims in the text of their disclosure documents, without the need to create separate ''earnings claim'' documents. Second, proposed section 436.5(s) would permit franchisors to disclose truthful information about the financial performance of all or a subgroup of franchisor-owned or franchised outlets, provided the franchisor also describes the characteristics of the included outlets that may differ materially from those of the outlet that is offered for sale. In contrast, the current Rule permits such disclosures only if the data is directly relevant to the prospective franchisee's geographic market territory.[176]

Third, proposed section 436.5(s) incorporates two UFOC Item 19 provisions that greatly facilitate franchisors' ability to provide prospects with performance information. A franchisor who provides a prospective franchisee with the actual operating results of a specific unit being offered for sale need not comply with the general Item 19 disclosure requirements provided that the franchisor gives the information only to the potential purchaser of that unit and provides the potential purchaser with the name and last known address of each owner of the unit during the prior three years. In addition, a franchisor who make Item 19 financial performance representations can provide prospective franchisees with supplemental performance representations directed at a particular location or circumstance, apart from the disclosure document, provided that the franchisor furnishes such supplemental performance representations in writing, explains how it differs from the Item 19 disclosure, follows the Item 19 format, and leaves the information with the prospective franchisee. Both of these enhancements, which have no parallel in the current Rule, make it easier for franchisors to provide prospects with material performance information narrowly tailored to the particular outlets in question.

At the same time, proposed section 436.5(s)'s financial performance disclosure provision differs from the UFOC approach in one significant way. UFOC Item 19—as well as the current Rule—requires franchisors who make financial performance disclosures to state the number and percentage of the franchised outlets that have actually attained or surpassed the stated performance claim. The Commission

---

historical earnings information is critical to any evaluation of a business. for example, he cites Internal Revenue Service Ruling 59–60, Item D, which provides that: ''detailed profit and loss statements should be obtained and considered for a representative period immediately prior to the required date of appraisal, preferably five or more years.'' Mr. Karp believes that the failure of franchisors to disclose historical earnings information deprives prospects of material information that is essential in evaluating the franchise offering.

[165] See, *e.g.*, Duvall, Comment 19, at 2; Hogan & Hartson, Comment 28, at 7; Kaufmann, Comment 33, at 7; Tifford, Comment 78, at 5; IFA, Comment 82, at 3; Jeffers, Comment 116, at 5.

[166] Tifford, Comment 78, at 6; AFA, Comment 62, at 4; IL AG, Comment 77, at 2; IFA, Comment 82, at 3.

[167] Cendant, Comment 140, at 2.

[168] See also Duvall, Comment 19, at 2; Kaufmann, Comment 33, at 7; Jeffers, Comment 116, at 5; Zarco & Pardo, Comment 134, at 6; CA BLS, Comment 124, at 2.

[169] SBA Advocacy, Comment 36, at 8; CA BLS, Comment 124, at 2; Lagarias, Comment 125, at 4–5.

[170] Kaufmann, Comment 33, at 15.

[171] Wieczorek, 6 Nov 97 Tr at 183–84.

[172] IL Ag, Comment 77, at 2. See also AFA, Comment 62, at 6.

[173] WA Securities, Comment 117, at 3; NASAA, Comment 120, at 8; Zarco & Pardo, Comment 134, at 6; Kezios, 18 Sept 97 Tr at 91; Tifford, 18 Set 97 Tr at 91–92.

[174] See also Cordell, 6 Nov 97 Tr at 199–200.

[175] See Hogan & Hartson, Comment 28, at 7; Kaufmann, Comment 33, at 7; Tifford, Comment 78, at 5; IFA, Comment 82, at 3.

[176] See 16 CFR 436.1(b)(1); 436.1(c)(1).

believes that this disclosure may be misleading and may actually discourage franchisors from making financial performance information available to prospective franchisees. For example, a franchisor may have statistics showing that 9 out of 10 franchised stores in a particular location (such as Seattle) average $100,000 net profit a year. Yet, the current UFOC and Rule requirements would prevent the franchisor from disclosing truthful information about the universe the franchisor has measured—the 10 franchised outlets in Seattle. Rather, the franchisor would be forced instead to state 9 out of the entire number of all franchises nationwide (*e.g.*, 9 out of 1,000) have earned the $100,000 claimed.

This approach arguably would prevent a franchisor who does not have complete financial performance information on each and every franchise in its system from making truthful performance representations about a subset of franchisees, such as franchisees operating in a particular geographic area or operating a particular kind of unit (*e.g.*, kiosks in shopping malls). Moreover, in the example noted above, a disclosure that 9 out of 1,000 franchisees have earned the represented amount ($100,000) is misleading because it implies that 991 franchisees have not earned the claimed amount when, in fact, the franchisor may not have sampled or otherwise measured the remaining group of 991.

Accordingly, the Commission proposes to amend the Rule to permit a franchisor to disclose historical financial performance information in its Item 19 disclosures if there is a reasonable basis for such information and the franchisor: (1) Discloses the nature of the universe of outlets measured; (2) the dates during which the reported level of financial performance was achieved; (3) the number of outlets in the universe measured during the relevant period; (4) the number of outlets from the universe measured whose performance were utilized in arriving at the representation; (5) of the number of outlets whose data was utilized, the number and percentage that actually attained or surpassed the stated results; and (6) characteristics of the included outlets that may differ materially from those being offered to the prospective franchisee.[177]

Based upon the record, the Commission also proposes to adopt the ANPR proposal that franchisors include prescribed preambles in Item 19 to clarify the law regarding financial performance claims. Among other things, the first preamble corrects the common misrepresentation that the Commission or the Rule actually prohibits the making of financial performance disclosures.[178] In light of the Commission's extensive law enforcement history combating false and unsubstantiated performance claims, the Commission also believes that the first preamble is necessary to encourage prospective franchisees to consider financial performance representations made in an Item 19 disclosure only. In addition, the Commission believes that the second preamble, which is used only if the franchisor does not disclose performance information, is warranted to alert prospective franchisees that any subsequent performance claims are unauthorized and, impliedly, should not be relied upon.

The proposed revised preambles incorporate many of the suggestions offered in response to the ANPR. For example, some commenters voice concern that phrases in the original preamble such as ''do not rely on'' unauthorized performance information may be misinterpreted as a disclaimer of liability in those instances where salespeople routinely make false or unauthorized performance claims.[179] Accordingly, the revised preamble deletes the reference to ''do not rely'' in favor of a broader statement alerting prospective franchisees that a franchisor can provide financial performance data ''only if the information is included in the disclosure document.'' The proposed revised first preamble also clarifies the law regarding financial performance disclosures by noting two exceptions to the general rule that performance claims must appear in Item 19: (1) Actual records of an existing outlet for sale; and (2) supplemental performance information about a particular location. The Commission also agrees with the commenters who suggest that the second preamble include a provision encouraging prospective franchisees to report any unauthorized earnings claims to the franchisor, the Federal Trade Commission, and state authorities.[180]

t. Proposed Section 436.5(t): Item 20 (Outlets and Franchisee Information)

Proposed section 436.5(t) is another anti-fraud disclosure provision. Based upon UFOC Item 20, it requires franchisors to disclose in tabular form statistical information on the number of franchises and franchisor-owned outlets, including the number of franchises that have failed or otherwise ceased operations. It also requires franchisors to provide prospective franchisees with the names and addresses of current and former franchises, with which they can verify the franchisors' representations and learn more about the franchise relationship.[181] For these reasons, the Commission agrees that Item 20 is among the most material disclosure items.[182]

Proposed section 436.5(t) enhances the less comprehensive disclosures found at 16 CFR 436.1(a)(16) by requiring franchisors to disclose the names and addresses of former as well as current franchisees. It also increases the number of franchisees about whom information is disclosed from 10 to either all or at least 100. This information prevents fraud by arming prospective franchisees with a source of information with which they can conduct their own due diligence investigation of the franchise offering. At the same time, proposed section 436.5(t) corrects a ''double counting'' problem in UFOC Item 20 that was identified during the Rule Review proceeding. As explained below, proposed section 436.5(t) also improves UFOC Item 20 by addressing the use of gag clauses and trademark-specific franchisee associations.

''Double Counting'' Issue. During the Rule Review, commenters voiced concern that UFOC Item 20 is flawed

[177] For example, a franchisor may state a historical performance representation as follows:

Franchised outlets in Seattle earned $100,000 in 1998.

The Franchisor has sampled all of its franchised outlets in Seattle during the period 1998. The sample included 10 outlets. Nine of the 10 outlets responded. Of the nine responding franchised outlets, all attained or surpassed net profits of $100,000. We note, however, that each of the franchised outlets in Seattle has been in business for over 10 years and is located in an urban center.

[178] Several commenters state that such misrepresentations are prevalent and urge the Commission to clarify the Rule to address this problem. For example, Peter Lagarias states: ''I am personally aware of franchisors (and sometimes even their lawyers) stating that earnings claims are forbidden by the Commission's Rule. The Commission should clarify in the Rule that the franchisor could elect to make earnings claims but has elected not to make earnings claims.'' Lagarias, Comment 125, at 4. See also Hogan & Hartson, Comment 28, at 8; SBA Advocacy, Comment 36, at 8; AFA, Comment 62, at 5; Purvin, Comment 79, at 2; Jeffers, Comment 116, at 5; CA Bar, Comment 124, at 1.

[179] SBA Advocacy, Comment 36, at 8; CA Bar, Comment 124, at 2; Lagarias, Comment 125, at 4–5.

[180] WA Securities, Comment 117, at 3; NASAA, Comment 120, at 8; Zarco & Pardo, Comment 134, at 6; Kezios, 18 Sept 97 Tr at 91; Tifford, 18 Sept 97 Tr at 91–92.

[181] SBP, 43 FR at 59670–73.

[182] See Karp, 19 Sept 97 Tr at 95; Slimak, 22 Aug 97 Tr at 33.

and needs to be fixed.[183] Specifically, commenters observed that franchisors may report a change in franchise ownership in multiple categories, which may inflate the overall number of franchise closings. Accordingly, in the ANPR, the Commission acknowledged this concern and solicited comment on how UFOC Item 20 could be improved.[184]

In response to the ANPR, several commenters confirm the ''double counting'' problem.[185] However, only a few commenters offer concrete solutions, as noted below, and no consensus has emerged on how to correct the problem. Specifically, three commenters suggest that the Commission solve the double counting problem by adding additional categories to the Item 20 disclosure.[186] Another commenter believes that most double reporting problems are attributable to the inclusion of transfers and reacquisitions in the UFOC Item 20 table that summarizes franchised outlets. He suggests that transfers should be reported in a separate column located on the side of the franchisee statistics table and that reacquisitions be moved to the second UFOC Item 20 table concerning company-owned outlets.[187] At the same time, this commenter suggests that franchisors report multiple ownership changes only once, according to which event was ''first-in time.'' [188] Other commenters suggest that the Commission require franchisors to report multiple events according to a predetermined order of priority.[189] Specifically, the Commission could require franchisors to report multiple ownership changes only once, but eliminate ''picking and choosing'' of categories by assigning a specific order of priority such as termination, non-renewal, reacquisition, and transfer. For example, a franchisor might report an ownership change as a termination, regardless of what other events may have occurred before (abandonment of the property) or after (reacquisition or transfer).

The Commission believes that proposed section 436.5(t) fixes the double counting problem within the framework of the UFOC Guidelines. Franchisors would start the disclosure by noting the states where they have outlets (column 1) and the number of outlets opened at the beginning of the fiscal year (column 2). Franchisors then note the number of franchises with the same ownership at the end of the year (column 3). Next, franchisors report on franchisees who have left the system during the course of the term of the franchise agreement because of one of three events—termination, reacquisition, and transfer (columns 4–6). Franchisors then report outlets that were not renewed at the end of the franchise term (column 7). To ensure that all outlets are accounted for, there is a miscellaneous category ''outlets that ceased operation or closed for other reasons'' (column 8). This category would capture information about events such as an abandonment of an outlet. To aid prospective franchisees in understanding the net effect of changes in ownership, franchisors also report the total number of outlets discontinued during the fiscal year (column 9). Finally, to account for franchisees that have joined the system during the fiscal year, franchisors report the total number of outlets in operation at the end of the year (column 10).

The Commission believes that proposed section 436.5(t) solves the double counting problem in a streamlined and efficient manner without increasing compliance burdens. First, proposed Item 20 addresses the core source of double counting—imprecise reporting categories. To that end, it defines with specificity the terms ''termination,'' ''reacquisition,'' ''transfer,'' and ''nonrenewal,'' creating mutually exclusive categories. A ''termination'' occurs when a franchisor sends a franchisee an unconditional notice that it will terminate the franchise agreement before the end of the agreement term. A ''reacquisition'' is limited to instances where the franchisee sells his or her outlet back to the franchisor. A ''transfer,'' in turn, is limited to instances where a franchisee sells his or her outlets directly to a new franchise owner. Finally, a nonrenewal occurs when a franchisor sends a franchisee an unconditional notice that it will not renew the franchise agreement at the end of the agreement term. These proposed definitions eliminate a major source of double count: overlapping categories.[190] At the same time, the proposed definitions have the additional benefit of informing a prospective franchisee about the extent to which franchisees recoup some of their investment when they leave the system.[191]

Second, proposed section 436.5(t)(1)(xi) reduces double counting by adopting a ''first-in-time'' approach: when an ownership change involves two or more events, the franchisor reports only the event that occurs first.[192] For example, a franchisor may formally notify a franchisee that the franchise will be terminated on a specific date and the franchisee then transfers the outlet to a new owner. Under the ''first-in-time'' instruction, the termination would be considered the first event.

While the Commission proposes a chronological approach (''first-in-time'') to reporting ownership changes, it nonetheless wishes to explore further the suggestion that the Commission require franchisors to report ownership changes according to a precise order of priority. The record, however, is devoid of any information from which the Commission could prioritize changes in ownership. Accordingly, the Commission seeks comment on whether the proposed first-in-time approach, coupled with precise category definitions, is sufficient to address the double counting issue, or whether the Commission should establish a specific order of priority. If an order of priority is preferred, then the Commission solicits specific suggestions for creating such a priority list.

Gag Clause Issue. In the ANPR, the Commission explored the use of gag clauses, contractual provisions that prohibit or restrict former or existing franchisees from discussing their experiences within the franchise system.[193] Recognizing that gag clauses may harm prospective franchisees by limiting their ability to conduct a due diligence investigation of the franchise offering,[194] the Commission asked for

[183] *E.g.*, Simon, RR Tr. at 223–24; Perry, RR Tr. at 263.

[184] 62 FR at 9121.

[185] *E.g.* Hogan & Hartson, Comment 28, at 6; AFA, Comment 62, at 3; IL AG, Comment 77, at 2; Tifford, Comment 78, at 4; IFA, Comment 82, at 2; Cendant, Comment 140, at 3; Karp, 19 Sept 97 Tr at 91.

[186] For example, Robert Zarco recommends that the Commission create 12 categories to capture various combinations of ownership changes. Transfers, for instance, would be divided into four distinct categories: (1) Transfers by the franchisee to the franchisor; (2) transfers by the franchisee to the franchisor, but ultimately re-franchised; (3) transfers by the franchisee directly to a new franchisee; and (4) transfers by the franchisee directly to a new franchisee more than once. Zarco & Pardo, Comment 134, at 6–7. See also AFA, Comment 62, at 3; Karp, Comment 136, at 2–6.

[187] Wieczorek, Comment 122, at 2.

[188] *Id.*

[189] Simon, 18 Sept 97 Tr at 23–24; Tifford, *id.* at 25–26. See also Bundy, 6 Nov 97 Tr at 229.

[190] Several commenters urged the Commission to define the terms ''transfers'' and ''reacquisitions'' more precisely. IL AG, Comment 77, at 2; Tifford, Comment 78, at 4; Wieczorek, Comment 122, at 1–2.

[191] *See* Kaufmann, 18 Sept 97 Tr at 27; Karp, 19 Sept 97 Tr at 92.

[192] *See* Wieczorek, Comment 122, at 2; 6 Nov 97 Tr at 225–26.

[193] 62 FR at 9121.

[194] See *FTC* v. *Orion Prod.*, Bus. Franchise Guide (CCH) ¶ 10,970 (N.D. Cal. 1997), and FTC v. Tutor Time Child Care Sys., Bus. Franchise Guide (CCH) ¶ 10,971 (N.D. Cal. 1997). *Cf. FTC* v. *Comprehensive Accounting Corp.*, Bus. Franchise Guide (CCH) ¶ 8911 (N.D. Ill. 1987 (Defendants prohibited from ''wrongfully discouraging''

comment on the extent to which franchisors use gag clauses to inhibit franchisee speech, whether the Commission should modify the Rule to prohibit franchisors from using gag clause provisions, and alternatives that would ensure that prospective franchisees can freely obtain information from former and existing franchisees about their experience with the franchise system.

In response, a quarter of the commenters (42 out of 166 commenters) address the gag clause issue, the majority opposing their use.[195] In addition, several participants at the Commission staff's six public workshop conferences on the ANPR identified gag clauses as a problem. The most poignant example was a franchisee of an undisclosed franchise system who attended the Chicago public workshop conference. She told Commission staff that she had to speak quickly because she was on her way to sign a final agreement terminating her relationship with her franchisor. The termination agreement she was to sign included a gag clause.[196]

Commenters opposing the use of gag clauses, including state regulators and some franchisors, assert that such clauses inhibit prospective franchisees from learning the truth about the franchise system as they attempt to conduct their due diligence investigation of the franchise offering.[197] Attempts to restrict franchisee speech through gag clauses may deceive prospects by effectively eliminating one source of information, namely those who may have a dispute with the franchisor or are otherwise disgruntled.[198] Indeed, a franchisor, if it wished to do so, could use gag clauses to ensure that prospects speak with only those franchisees who are successful or otherwise inclined to give a positive report.[199] In addition, one commenter contends that the harm flowing from gag clauses goes beyond individual franchise sales, noting that gag clauses intimidate franchisees against testifying before legislative committees and public agencies, such as the Commission.[200]

On the other hand, several franchisors or their representatives oppose banning the use of gag clauses. For example, one commenter contends that gag clauses prevent disgruntled franchisees from inflaming others and enable franchisors to end relationships with problem franchisees without spending considerable resources. He asserts that banning gag clauses would impede informal settlements between franchisors and franchisees.[201] Other commenters note that franchisors must have the ability to protect their trade secrets from disclosure.[202]

Other commenters offer a variety of suggestions on how the Commission might address the use of gag clauses short of an outright ban. For example, a few commenters suggest that franchisors should note in their Item 20 which specific franchisees are subject to a gag clause provision. Such a requirement would accomplish two goals simultaneously. It would alert prospective franchisees that the franchisor may require its franchisees to sign gag clauses, and it would save prospects the time and trouble of trying to contact franchisees who, in fact, are not free to speak.[203] In response, however, one commenter contends that such an approach would be unnecessarily burdensome, observing that franchisors would have to update their disclosures more frequently, especially in franchise registration states.[204]

As an alternative, several comments suggest that franchisors disclose the number and percentage of current and former franchisees subject to gag clauses. Indeed, of the various proposals suggested in response to the ANPR and during the public workshop conferences, a general disclosure about the use of gag clauses garnered the most support.[205] Finally, one commenter adds that franchisors should disclose the use of gag clauses over a period of three years in order to highlight a pattern or trend in their usage. He observes: ''the fact that 1 out of 100 of 1996's former franchisees had a gag order does not really fairly present the picture if you have 80 out of 100 in 1995.'' Bundy, 6 Nov 97 Tr at 257. Rather, franchisors should present information that would reveal a trend.

Based upon the record, the Commission proposes to modify UFOC Item 20 to require franchisors to disclose information about their use of gag clauses, which bar franchisees from speaking with others about their personal experiences as franchisees.[206] The Commission finds that such clauses are widespread in termination agreements and dispute settlements.[207] Neither the current Rule or UFOC Guidelines addresses this issue.

Proposed section 436.5(t)(6) provides that a franchisor must disclose the existence of gag clauses if, within the last three fiscal years, franchisees have signed gag clause provisions in any agreement, settlement, or other contract. In addition, the franchisor must state

franchisees from giving unfavorable references to potential investors.'').

[195] *E.g.*, Manuszak, Comment 13, at 1; Sibent, Comment 41, at 1 (and 19 identical comments); AFA, Comment 62 at 3; IL AG, Comment 77, at 2; Buckley, Comment 97, at 1; Marks, Comment 107, at 2; WA Securities, Comment 117, at 2; NASAA, Comment 120, at 4; Dady & Garner, Comment 127, at 2. Opponents of gag clauses include several franchisor representatives. *E.g.*, Kestenbaum, Comment 40, at 2. Cendant opposes the use of gag clauses outside of litigation, except to protect trade secrets or other proprietary information. Cendant, Comment 140, at 3.

[196] Lundquist, 22 Aug 97 Tr at 42–43. See also Maloney, Comment 38, at 2.

[197] NCL, for example, states: ''Because the experience of others who have purchased a franchise or business opportunity is the best indicator of potential earnings and other factors for prospective buyers, 'gag orders' that prohibit people from sharing their experience with others should be prohibited.'' NCL, Comment 35, at 3. See also Baer, Comment 25, at 3; Karp, 19 Sept 97 Tr at 95–96.

[198] From example, Roger Haines, a Scorecard Plus franchisee, states:

I had spoken to some of the franchisees that had left the system. I now feel certain that they painted a picture that was not close to being the truth based on the gag order that [the franchisor] imposed. Had I gotten the truth from these people, my decision certainly would have been different. Every franchisee leaving the system has had a gag order placed on them, making it impossible for current and future franchisees to get the facts.

Haines, Comment 100, at 2.

[199] See NASAA, Comment 120, at 4.

[200] Selden, Comment 133, Appendix B, at 2.

[201] Kaufmann, Comment 33, at 5–6; See also Tifford, Comment 78, at 3; IFA, Comment 82, at 2; Duvall, 6 Nov 97 Tr at 247; Gitterman, 6 Nov 97 Tr at 250–51.

[202] Baer, Comment 25, at 3. Even franchisee advocates recognize franchisor's legitimate need for trademark protection. *E.g.*, AFA, Comment 62, at 3; Zarco & Pardo, Comment 134, at 4.

[203] See Cordell, 6 Nov 97 Tr at 247–48; Kezios, *id.* at 256. See also NASAA, Comment 120, at 4.

[204] Wieczorek, 6 Nov 97 Tr at 258–59.

[205] Zarco & Pardo, Comment 134, at 4. Similarly Howard Bundy adds that ''[i]n a perfect world I would have a list of those that are subject to [gag clauses], so I didn't have to make all those extra 75 calls. But I could live with or without that. It's more important to disclose the fact that they do exists.'' Bundy, 6 Nov 97 Tr at 249. See also Selden, Comment 133, Appendix B, at 2; Jeffers, 6 Nov 97 Tr at 251–52. See also Wieczorek, 6 Nov 97 Tr at 260.

[206] The term ''gag clause'' is defined in proposed section 436.3(k) as: ''any contractual provision entered into by a franchisor and a current or former franchisee that prohibits or restricts the franchisee from discussing his or her personal experience as a franchisee within the franchisor's system. It does not include confidentiality agreements that protect the franchisor's trademarks or proprietary information.

[207] For example, one franchisee signed an agreement upon termination that contained the following clause:

The Slimak parties shall not make any derogatory or disparaging action or make any false, derogatory, or disparaging comment, publicly or privately, concerning the Jacadi parities, or any of the directors, officers, shareholders, affiliates, employees, agents, consultants, successors, or assigns or Jacadi products * * *. If questioned by any third party as to the circumstances surrounding the termination of the franchise agreement. The Slimak Parties shall state only that the parties mutually agreed to terminate their commercial relationship.

Slimak, Comment 130, at 1. See also Doe, 7 Nov 97 Tr at 276.

the consequences to the prospective franchisee, namely that current and former franchisees may not be able to speak freely about their experiences. To add flexibility, the Commission proposes further that the franchisor be permitted to disclose the number and percentage of its current and former franchisees in each of the last three years that are subject to a gag clause. This optional disclosure would enable a franchisor to disclose how widespread the use of gag clauses is in its system. For example, a franchisor might wish to disclose such data to demonstrate that its franchisees sign gag clauses in isolated instances only, or that the trend is away from using such clauses. At the same time, proposed section 436.5(t)(6) would also permit a franchisor to explain its use of gag clauses. The Commission believes that a bald risk factor or disclosure about the number and percentage of franchisees under a gag clause arguably may be misleading and prejudicial to a franchisor.[208] For example, a franchisor conceivably may enter into an agreement containing a gag clause only at the request of the franchisee during the course of negotiations. The Commission believes that a franchisor should be able to clarify any disclosures about gag clauses with additional, truthful information that puts the use of gag clauses into a proper context.

Franchisee Association Issue. In response to the ANPR, a number of franchisees and their advocates urge the Commission to revise UFOC Item 20 to require the disclosure of trademark-specific franchisee associations. In some instances, these organizations are recognized councils approved by the franchisor, where franchisee-participants are selected by the franchisor or are elected by the system's franchisees. In other instances, the organizations are independent of the franchisor.[209] One commenter explains the need for such a disclosure as follows:

> The UFOC Guidelines currently require disclosure of the existence of purchasing cooperatives known to the franchisor, but this is not adequate disclosure of a fact of growing importance to franchisees, which is the existence, or non-existence, of an autonomous franchisee association representing franchisees in that particular franchise organization. When an organization represents a substantial plurality of franchisees in the system, perhaps over 30%, and its existence is known to the franchisor, that fact should be disclosed, possibly by an additional category in the list of existing franchisees required in item 20, as an additional and critical source of information about the franchise opportunity.

Selden, Comment 133, Appendix B. at 1.[210]

Franchisors generally do not oppose a disclosure for trademark franchisee associations, especially franchisor-sponsored franchisee advisory councils and recognized independent franchisee associations. However, they voice concern about any mandate to disclose independent franchisee associations. They assert that such organizations are often small, informal groups that come and go, or organizations formed on the local or regional level without the knowledge of the franchisor.[211] In short, they fear liability for failing to disclose the existence of groups that they do not know exist.

Based upon the record, the Commission agrees that franchisors should disclose the existence of trademark-specific franchisee associations.[212] The Commission has long recognized that the names and addresses of current franchisees is material information, enabling prospective franchisees to conduct their own due diligence investigation of the franchise system. Providing prospective franchisees with information about an organized group of franchisees is a logical extension, giving franchisees yet an additional source of material information from which they can learn about the system, especially franchisees' financial performance history. This disclosure is particularly important if individual former and existing franchisees of a system are subject to gag clauses or are otherwise reluctant to talk with prospective franchisees.[213]

The Commission believes proposed section 436.5(t)(7) strikes the right balance between providing disclosure to prospective franchisees and eliminating franchisors' potential liability for failing to disclose the existence of franchisee organizations that are unknown to them. It would require franchisors to disclose organizations whose existence is known to them either because the franchisor sponsors the organization or formally recognizes the organization. In addition, it would require the franchisor to disclose incorporated, independent franchisee associations, but only to the extent that such organizations make their existence known to the franchisor on an annual basis. This would eliminate franchisors' concerns about having to disclose every small, informal group of franchisees by limiting the disclosure to incorporated organizations, which are more likely than unincorporated organizations to have an ''institutional history,'' as well as the time and inclination to speak with prospective franchisees. It would also shift the burden to the franchisee association to ask specifically to be included in the franchisor's disclosure document. The Commission believes that this approach would relieve franchisors of the burden of, and potential liability associated with, having to identify such organizations. To further reduce compliance costs and burdens, proposed section 436.5(t)(7) makes clear that a franchisor must list the franchisee organization in its disclosure document to be used in the next fiscal year only. This relieves franchisors of the burden of having to verify the continued existence of the organization in the future. In short, a franchisee organization would have the

[208] Two commenters suggest that the Commission require a disclosure about gag clauses only if the number of franchisees subject to such clauses surpasses some threshold. They imply that isolated instances of gag clause usage may be misleading to prospective franchisees or prejudicial to the franchisor. See Bundy, 6 Nov 97 Tr at 249; Jeffers, *id.* at 251–52. The Commission believes that the flexibility offered by proposed section 436.5(t)(6), in particular the franchisor's ability to explain when it uses gag clauses, appears sufficient to address this concern.

[209] Not all independent franchisee associations are well-received by the franshisor. Indeed, some commenters have told us that in some instances franchisors have filed suit to stop the formation of an independent group or have retaliated against individuals who have participated in such groups. *E.g.*, Donafin, Comment 14, at 1. See also Mueller, Comment 29, at 1–2; Bell, Comment 30, at 1; Rachide, Comment 32, at 3.

[210] Similarly, Martin Cordell, a franchise examiner for the State of Washington, observes that disclosing trade associations could ''be a much more ready source of information as opposed to individual franchisees who have to take time out of the businesses to share information with the prospective franchisee.'' Cordell, 6 Nov 97 Tr at 168–69. Similarly, Susan Kezios of the AFA told us that associations, ''have a collective memory of what has been going on historically in the franchise system that one or another individual franchisees may or may not have.'' *Id.* at 176. See also Manuszak, Comment 13, at 1; Zarco & Pardo, Comment 134, at 3; Kezios, 6 Nov 97 Tr. at 168; Wieczorek, 6 Nov 97 Tr at 170; Bundy, *id.* at 173.

[211] Shay, 18 Sept 97 Tr at 71; Wieczorek, 6 Nov 97 Tr at 169–70; Duvall, *id.* at 171.

[212] The Commission is not suggesting that franchisors disclose the existence of broad-based associations that represent franchisee interests generally, such as the American Franchisee Association or the American Association of Franchisees & Dealers.

[213] The record indicates that franchisees may be reluctant to share information about their system with prospective franchisees either because they do not have the time, or because they fear retaliation from their franchisor. For example, Howard Bundy told us that he often instructs his franchisee clients to state only their ''name, rank, and serial number and refer [the prospect] back to the franchisor for everything else.'' Mr. Bundy explains that franchisees who make statements in connection with a franchise sale might be deemed franchise brokers under state law and could be liable for any claims or damages resulting from the sale. He also fears that franchisees who volunteer information might be subject to a defamation suit by the franchisor. Bundy, 6 Nov 97 Tr at 236–37.

burden to renew its request for inclusion in the disclosure document on an annual basis.

u. Proposed section 436.5(u): Item 21 (Financial Statements)

Based upon UFOC Item 21, proposed section 436.5(u) requires the disclosure of audited financial information based upon generally accepted accounting principles. It improves the comparable Rule disclosures currently found at 16 CFR 436.1(a)(20) by requiring franchisors to present financial disclosures in columns that compare at least two fiscal years. This will enable prospective franchisees to analyze better the franchisor's fiscal status by seeing at a glance a broad snap-shot of the company's historical earnings performance.

At the same time, the Commission proposes to modify the Rule to clarify the Commission's three-year phase-in of audited financial statements.[214] In the ANPR, the Commission solicited comment on whether the Commission should retain the phase-in.[215] Without exception, the commenters who address this ANPR issue continue to support a three-year phase-in,[216] and no commenter offers any refinements or alternatives to the Commission's current phase-in approach.

The proposed phase-in clarifies and streamlines the Commission's current phase-in provision in several ways. As with the current phase-in, franchisors will be allowed two fiscal years before they are required to provide full audited financial statements. The proposed phase-in, however, eliminates the arguably confusing current distinction between a franchisor's first ''partial'' or ''full'' fiscal year by collapsing ''partial'' and ''full'' fiscal years into one category. Under this proposal, all franchisors will be required to include audited financial statements in their disclosure documents by their third year, whether or not their first fiscal year was a partial or full year. The proposed phase-in also clarifies the Rule by setting forth the phase-in schedule in a clear and easy-to-understand table. This should enable franchisors to understand quickly the Rule's phase-in requirements. The Commission believes that the proposed phase-in of audited financial statements not only reduces compliance costs for start-up franchise systems, but effectively removes a potentially significant barrier to entry.

v. Proposed Section 436.5(v): Item 22 (Contracts)

Proposed section 436.5(v) incorporates UFOC Item 22.[217] It is also substantially similar to the current Rule instruction found at 16 CFR § 436.1(g). It prevents fraud by requiring franchisors to attach copies of all agreements pertaining to the franchise sale, such as the franchise agreement and any leases, options, or purchase agreements. This enables prospective franchisees to compare what the franchisor represents in its disclosures about the franchisor's and franchisee's legal obligations with the actual agreements that will govern the franchise relationship.[218]

w. Proposed Section 436.5(w): Item 23 (Receipt)

Proposed section 436.5(w) incorporates the UFOC Guidelines' Item 23 receipt requirement.[219] There is currently no comparable Rule requirement. The Commission believes that proposed section 436.5(w) will serve an important anti-fraud purpose. The Commission's law enforcement experience indicates that franchisees in many instances claim that they never received a copy of the franchisor's disclosure document. A requirement that franchisees acknowledge receipt of the disclosure document will better ensure that franchisees actually receive the disclosures with all required attachments. The receipt also serves an important consumer education function, informing prospects that they have 14 days to review the disclosures, that franchisees should receive certain attachments, and that franchisees can report possible law violations. Further, as explained below, a receipt is necessary to prove delivery in the event that a franchisor chooses to make disclosures via the Internet.[220]

At the same time, the Commission believes that the UFOC Item 23 receipt should be modified to afford franchisees greater flexibility in acknowledging receipt of a disclosure document. To that end, proposed section 436.5(w) would allow prospective franchisees to acknowledge receipt through a ''signature.'' As explained *supra* at Section C.4.w., the Commission proposes to define the term ''signature'' to include not only written signatures, but digital signatures, passwords, security codes, and other devices that will enable a prospective franchisee to easily acknowledge receipt, confirm their identity, and submit the information to the franchisor. Proposed section 436.5(w) also provides that franchisors may include specific instructions on how to submit the receipt, such as via facsimile. This would enable the parties to determine for themselves the most efficient way for the prospective franchisee to acknowledge receipt.

Proposed section 436.5(w) also adds two new provisions. First, section 436.5(w)(2) provides that franchisors shall obtain a signed copy of the receipt at least five days before the prospective franchisee signs the franchise agreement or pays any fee in connection with the franchise sale. In effect, franchisors must have the signed receipt at the time they furnish prospective franchisees with the completed franchise agreement. The Commission believes this provision is necessary to ensure that the prospective franchisee receives the disclosures in a timely fashion. It also prevents fraud by effectively prohibiting franchisors from requiring franchisees to backdate the disclosure document receipt after the sale has been completed. Finally, section 436.5(w)(3) adds a minor recordkeeping provision, requiring franchisors to retain a copy of the signed receipt for a period of at least three years. This provision is necessary in order for franchisors to prove compliance with the rule's disclosure and timing provisions. The Commission believes that this requirement should not impose any significant costs or burdens on franchisors, who generally would retain a copy of the receipt as a standard business practice, especially to comply with the laws of many franchise registration states that require franchisors to keep records of each franchise sale.

9. Proposed Section 436.6: Instructions for Preparing Disclosure Documents

The next section of the proposed Rule sets forth the basic instructions for preparing a disclosure document. For the most part, the existing Rule instructions are unchanged.

a. Proposed Section 436.6(a): Plain English

Proposed section 436.6(a) adopts the UFOC's requirement that disclosure documents be written in plain English.

[214] 16 CFR 436.1(a)(20(ii).

[215] 62 FR at 9121.

[216] *E.g.*, Duvall, Comment 19, at 1; Baer, Comment 25, at 4; Kaufmann, Comment 33, at 6; Kestenbaum, Comment 40, at 2; AFA, Comment 62, at 3; IL AG, Comment 77, at 3; Tifford, Comment 78, at 4; IFA, Comment 82, at 1; Jeffers, Comment 116, at 2.

[217] In response to the ANPR, no commenter raised any concerns about UFOC Item 22, upon which proposed section 436.5(v) is based.

[218] In the SBP, the Commission recognized that this requirement ''will therefore have a remedial effect in that it will encourage accurate discussion of the required information in the disclosure statement.'' 43 FR at 59696.

[219] In response to the ANPR, no commenter voiced any concerns about UFOC Item 23, upon which proposed section 436.5(w) is based.

[220] See infra Section C.10.b.

The plain English requirement is also consistent with the efforts of the federal government's National Performance Review to make all federal rules and regulations easier to understand.[221] The definition of the term ''plain English'' is discussed *supra* at Section C.4.q.

b. Proposed Section 436.6(b): Responses

Proposed section 436.6(b) directs franchisors to respond to each required disclosure item, either positively or negatively. Except for minor editing, proposed instruction 436.6(b) is identical to the current Rule provision found at 16 CFR § 436.1(a)(24).

c. Proposed Section 436.6(c): No Additional Materials

The first part of proposed section 436.6(c) specifies that franchisors may not include additional information in the disclosure document except for information required by non-preempted state law. This part is identical to the current Rule provision found at 16 CFR 436.1(a)(21). The remainder of the instruction makes clear that franchisors preparing multi-state disclosures may include state-specific information in an attachment to their basic disclosure document. This instruction reduces compliance burdens and costs because franchisors need not generate disclosure documents tailored for each state. This approach is consistent with several instructions found throughout the UFOC Guidelines.[222]

d. Proposed Section 436.6(d): Subfranchisors

Proposed section 436.6(d) addresses disclosure obligations pertaining to subfranchisors. Specifically, it requires subfranchisors to disclose the required information about the franchisor and, to the extent applicable, the same information about the subfranchisor. This is consistent with current Commission policy,[223] as well as the UFOC Guidelines.[224]

10. Proposed Section 436.7: Instructions for Electronic Disclosure Documents

Proposed section 436.7 sets forth instructions to enable franchisors to comply with the Franchise Rule electronically. In the ANPR, the Commission solicited comment on how franchisors might comply with the Franchise Rule via the Internet.[225] In response, two commenters offer substantially similar proposals, recommending that the Commission permit compliance via the Internet in at least the following scenario: (1) The franchisor has a web site that provides general information about its franchise system; (2) individuals interested in being considered for a franchise can fill out and transmit an online application; (3) applicants deemed by the franchisor to be serious prospects would be given a password to gain access to a section of the web site containing disclosure documents; and (4) the applicant reviews the appropriate disclosure document online.[226]

The Commission does not wish to impede franchisors' ability to maximize the use of new technologies in their efforts to comply with the Rule. The Commission, therefore, proposes that franchisors be free to use electronic media to furnish their disclosures to the fullest extent possible.[227] As the Commission recognized in its Internet Notice, electronic transmission of disclosures may be ''easier, more efficient, and less costly to industry members.'' [228] Electronic disclosure would also greatly reduce perhaps the chief costs imposed by the Rule: printing and distribution costs.

As explained below, the Commission proposes no new sweeping requirements in this area. Rather, proposed section 436.7, for the most part, elaborates upon concepts that are already part of the Rule, in particular how to ''furnish'' disclosures electronically and how to prepare ''clear,'' ''concise,'' and ''legible'' disclosures in an electronic environment. Nonetheless, in order to prevent fraud and circumvention of the Rule's pre-sale disclosure requirements, the proposed Rule contains two new, modest requirements: (1) That franchisors using electronic media provide prospective franchisees with a paper summary document containing an expanded cover page, table of contents, and acknowledgment of receipt, and (2) that franchisors retain a specimen hard copy of each materially different version of their disclosures.

a. Proposed Section 436.7(a): Consent

Proposed section 436.7(a) makes clear that a franchisor can furnish disclosures electronically only if it obtains the prospective franchisee's informed consent.[229] It also provides that prospective franchisees retain the right to revoke acceptance of an electronic disclosure document for any reason and obtain a paper copy up until the time of the franchise sale.

The Commission believes that the obligation to furnish disclosures would be a hollow one if franchisors could force prospective franchisees to receive disclosures in an electronic format that they cannot actually receive or read.[230] The Commission is also concerned that fraudulent operators will gravitate toward electronic media as a new way to avoid pre-sale disclosure. For example, a scam artist could decide to furnish its disclosures only in some obscure format that is essentially unaccessible to most prospective franchisees. In keeping with the Rule's very purpose—to prevent fraud—the Commission believes that candidates for a franchise who are trying to conduct their own due diligence investigation should be able to review a hard copy disclosure document if that medium is more convenient to them. Disclosure documents are often very lengthy and prospective franchisees may have difficulty reading the document on screen or downloading the document onto a disk. Some prospective franchisees simply may not wish to pay the cost to print the disclosure document from their computer screen. Until such time as electronic media are more widely used, and consumers are more comfortable with such media, the traditional paper copy should remain available as an option.

In the same vein, the Commission believes that franchisees should have

[221] See <www-a.blm.gov/nhp/NPR/plaine.html>. Indeed, several agencies already have incorporated plain English requirements in their rules and guides. See, *e.g.*, <www.sec.gov/consumer/plaine.htm> (SEC plain English guides); <www.irs.ustreas.gov/basic/tax-regs/reglist.htm> (Internal Revenue Service plain English guides).

[222] See, *e.g.*, UFOC Cover Page Instructions; UFOC Item 1C Instructions.

[223] See Final Interpretive Guides, 44 FR at 49969.

[224] See UFOC Guidelines, General Instructions 230 and 240.

[225] 62 FR at 9122.

[226] Su, Comment 24; PR One, Comment 105.

[227] To that end, the proposed Rule adds three new definitions. See *supra* at Section C.4. First, the term ''written'' has been revised to include all media that are capable of being printed and read. Second, the Commission has added the ''Internet,'' which is defined to include all communications between computers and between computers and other communications devices. Finally, the term ''signature,'' includes electronic signatures, passwords, and other devices as a substitute for the traditional handprinted signature.

[228] 63 FR at 25001.

[229] For example, the Commission expects a franchisor to disclose in advance the medium used to furnish its disclosures (such as computer disk, CD–ROM, E-mail, or Internet) and any specific applications necessary to view the disclosures (such as Windows 95, or DOS, or a particular Internet browser).

[230] This proposal is similar to the position adopted by the SEC with respect to federal securities regulations. See Use of Electronic Media For Delivery Purposes, SEC Release No. 33–7233, 60 FR 53458 (October 13, 1995) (''SEC Release''), formally adopted in SEC Release No. 33–7289, 61 FR 24652 (May 15, 1996), which advises the securities industry how it may use electronic media to deliver information (*i.e.*, prospectuses and proxy materials) required under various federal securities statutes. A copy of the SEC release is found at <http://www/sec.gov/rules/proposed/33–7233.txt>.

the ability to revoke acceptance of an electronic disclosure document in favor of a paper copy up until the time of the sale.[231] Requiring franchisors to provide prospective franchisees with a paper copy should not impose any significant burdens or costs. If a prospective franchisee finds that he or she cannot easily read a disclosure document electronically, it would be relatively easy, and cost little, for the franchisor to print a copy of its electronic version and mail it to the prospect.[232] This proposal is consistent with the Commission's Internet Notice, where the Commission recognized that:

> The requirement that certain information should be provided to another person implies that such information actually be received by that person. Therefore, although it may be advantageous to use new technology to comply with affirmative [disclosure] requirements, industry members should be mindful of certain issues. For example, the requirement to give, mail, deliver, or furnish information would not be met if the intended recipient does not have the technological capabilities of receiving or viewing the information. In certain circumstances, industry members may need to obtain the recipient's consent to deliver information by a certain electronic method, inform the recipient of any particular medium applications needed to view the information, or deliver the information on paper.

63 FR at 25001.

Finally, to ensure that prospective franchisees are notified about their right to receive a paper copy, proposed section 436.3(g) requires any franchisor seeking to furnish disclosures electronically to add the following provision to their cover page:

> You may have elected to receive an electronic version of your disclosure document. If so, you may wish to print or download the disclosure document for future reference. You have the right to receive a paper copy of the disclosure document up until the time of the sale. To obtain a paper copy, contact [name] at [address] and [telephone number].

Thus, prospective franchisees who wish to revoke acceptance of an electronic disclosure document for any reason will know whom to contact to receive a paper copy.

b. Proposed Section 436.7(b): Notice and Receipt

Proposed section 436.7(b) requires a franchisor who furnishes disclosures electronically to provide prospects with a paper summary document containing the following three items from its disclosure document: (1) The cover page, (2) the table of contents, and (3) the Item 23 receipt. Franchisors already prepare these three items as part of their disclosure document and should be able to produce the summary document at a relatively low cost. The Commission believes the proposed summary document requirement serves two anti-fraud purposes: (1) Advance notice of the importance of the information being disclosed; and (2) proof of receipt.

Based upon the Commission's law enforcement experience, it appears that many prospective franchisees are unaware of the Franchise Rule or that they should receive pre-sale disclosures. The Rule currently addresses this problem by requiring a cover page that conspicuously states, among other things, the name of the franchisor, that the document contains important information, and certain cautionary messages. In addition, the table of contents provides a summary of the types of disclosures contained in the document. The Commission believes that a prospective franchisee is more likely to read the disclosures if he or she knows that it contains information such as the franchisor's litigation history (Item 3), financial performance information (Item 19) and statistics on franchisees in the system (Item 20).

The proposed paper summary document would serve the same consumer education function, alerting the prospective franchisee to the importance of the electronic disclosures. Unlike a paper disclosure document—which clearly announces its contents on the cover page—an electronic disclosure document does not impart any information unless and until the prospective franchisee actually assesses it by opening a file or otherwise calling it up on a computer screen. The Commission is concerned that this might provide scam artists with a new fertile ground to commit fraud. For example, a franchise seller may seek to furnish disclosures under the Rule by simply handing a prospect an unmarked computer disk, without any further explanation. In such an instance, the prospect may fail to read the disclosures contained on the disk, or, worse, might discard the disk, because nothing draws his or her attention to the importance of the information contained on the disk. Similarly, a franchisor, in theory, might seek to comply with the Rule by verbally telling a prospective franchisee to visit the franchisor's web site to view the franchisor's disclosure document, or by scrolling through a copy of its disclosure document online during a presentation in a hotel room.[233]

To combat such potential fraud, proposed section 436.7(b) requires franchisors offering electronic versions of their disclosure documents to provide prospective franchisee with a paper summary document. Armed with the paper summary, the prospective franchisee would realize that: (1) They should receive disclosures; (2) the franchisor's Internet addresses (*i.e.*, E-mail and web site); (3) they have at least 14 days to review the disclosures; and (4) information on how to get a paper copy. For additional protection, section 436.7(b)(2) requires that the franchisor's receipt be incorporated into the summary document. This would prevent a franchisor from having a prospect sign only the receipt, without the benefit of reviewing the important consumer educational messages contained in the cover page, as well as in the table of contents.

In addition to serving a consumer education function, the summary document is necessary to prove delivery and receipt of the disclosures. Unlike paper disclosure documents, there is no certainty that prospective franchisees will actually receive disclosures that are sent via E-mail or made available over the Internet. As the Commission recognized in its Internet Notice:

> Because there may be technological difficulties that could impede the electronic delivery of information, it may be necessary for industry members to confirm that the recipient in fact received the information. Most facsimile machines routinely confirm when the facsimile has been successfully transmitted. Senders, for example, might require recipients to confirm receipt by return e-mail or verify in some manner the recipients' access to information posted on the Web site.

63 FR at 25001.

The proposed Rule would provide prospective franchisees with several options for acknowledging receipt of the disclosure document. Prospective franchisees of course could sign the

[231] See SEC Release, 60 FR at 53460–61. Similarly, the Federal Reserve agrees in principle that consumers should be able to get a paper copy of electronic transfer disclosures, stating that it ''expects that financial institutions will accommodate a consumer's request for a paper copy, or that they will redeliver disclosures electronically, to the extent that it is feasible to do so.'' See Interim Rule on Electronic Fund Transfers (''EFT Rule''), implementing the Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.* (1978), 63 FR 14528, 14530 (March 25, 1998). See also Selden, Comment 133, at 3; Zarco & Pardo, Comment 134, at 5.

[232] See Wieczorek, 6 Nov 97 Tr at 61; Duvall, *id.*, at 62–63.

[233] The Federal Reserve has also expressed concern about disclosures posted on the Internet without prior notice: ''Simply posting information on an Internet site without some appropriate notice and instructions about how the consumer may obtain the required information would not satisfy the [disclosure] requirement.'' 63 FR at 14529. Similarly, the SEC has stated that stock issuers and others providing electronic delivery of information should have ''reason to believe that any electronic means so selected will result in the satisfaction of the delivery requirements.'' SEC Release, 60 FR at 53461–62.

receipt in either the paper summary document or Item 23 of the disclosure document. Proposed section 436.7(b)(1)(iii) would also enable prospective franchisees to ''sign'' the receipt in the disclosure document electronically. As discussed above, the term ''signature'' is defined broadly to include not only the traditional written signature, but digital signatures and other identity verification devices, such as passwords or security codes.[234] This differs from the UFOC Guidelines, which permits a written signature only.

While the Commission believes that franchisors and prospective franchisees should be able to take advantage of new technologies, it nonetheless rejects the suggestion that a franchisor be permitted to demonstrate receipt through ''electronic verification,'' such as embedding a code in a disclosure document that would send a signal to the franchisor once an electronic disclosure documents has been opened.[235] The Commission believes that prospective franchisees should take some affirmative step to acknowledge receipt and confirm their identify. The acknowledgment of receipt serves not only as proof of delivery, but, as discussed above, a consumer education vehicle. For example, the acknowledgment form reminds the prospect that he or she is to receive supplemental documents along with the basic disclosure document, such as contracts or lease agreements. It also informs the prospect to report any inaccuracies in the disclosure document to the Commission and state authorities. These potential benefits to prospective franchisees might be lost if the franchisor could prove delivery solely through electronic verification. Requiring a prospect to sign the acknowledgment would better ensure that the prospect has actually read the acknowledgment page.

c. Proposed Section 436.7(c): Preservation of Disclosures

Proposed section 436.7(c) requires franchisors to ensure that an electronic version of a disclosure document must be capable of being printed, downloaded, or otherwise preserved as one single document. The Commission believes that the concept of ''furnishing'' disclosures implies that prospective franchisees will receive a document that can be preserved for future reference.[236] This requirement is particularly important with respect to disclosures disseminated via the Web (which are often transitory), especially if the franchisor does not maintain an online archive of its disclosure documents.

d. Proposed Section 436.7(d): Single Document

Proposed section 436.7(d) makes clear that electronic disclosures, like hard copies, must be capable of being reviewed as a single, self-contained document. This proposal is analogous to the Internet Notice's discussion of unavoidability, where the Commission stated:

> to ensure effectiveness, disclosures ordinarily should be unavoidable by consumers acting reasonably. On the Internet or other electronic media, this means that consumers viewing an advertisement should necessarily be exposed to the disclosure in the course of a communication without having to take affirmative action, such as scrolling down a page, clicking on a link to other pages, activating a ''pop up,'' or entering a search term to view the disclosure.

63 FR at 25003.

The Commission recognizes that a franchisor, in theory, could divide its disclosures into separate documents that are hyperlinked together or accessed through a pop-up screen or other device. However, the Commission believes that prospective franchisees reviewing electronic disclosures should not have to surf the franchisor's web site or take affirmative action to access the required disclosures. In addition, if a prospective franchisee sought to download or print the disclosure document for future reference, disclosures contained in a separate, but linked text, would most likely be excluded. In short, any impediment to the prospect's ability to review all portions of a disclosure document online or to preserve the text as a single document would render the document an ineffective communication.

e. Proposed Section 436.7(e): Features

Proposed section 436.7(e) addresses the use of special features available in electronic media. Many special features exist in an electronic environment, such as audio, video, graphics, pop-up screens, and scrolling messages. Proposed section 436.7(e) limits the use of special features to those that will assist a prospective franchisee to navigate through a disclosure document, such as internal hyperlinks, scroll bars, and search functions. Such features are the functional equivalent of leafing through a hard-copy document. In other respects, however, an electronic disclosure document must be unadorned. The Commission is concerned that, if permitted, franchisors could use graphics, animation, audio, video, and other features to call attention to favorable portions of their disclosure document or to distract prospects from damaging disclosures—such as litigation (Item 3) and franchisee failure rates (Item 20).[237]

f. Proposed section 436.7(f): Accessibility

Proposed section 436.7(f) requires that electronic disclosures remain accessible at least until the time of the sale. The concept of ''furnishing'' disclosures implies that prospective franchisees will receive a document that can be reviewed at will. The Commission is concerned that a scam artist, for example, may embed a code or a virus in a computer disk that will effectively destroys its contents. Similarly, as noted above, disclosure documents posted on the Internet are often transient: A disclosure document used one day may be updated the next. It is also possible that a franchisor, for some reason, may simply decide to suspend disseminating its disclosures online, leaving prospective franchisees who have agreed to accept disclosures via the Web without any ability to access the disclosures.

At the same time, the Commission recognizes that any obligation on the franchisor's part to ensure that electronic documents remain accessible should be limited. For example, a document posted on the Internet may become inaccessible not because of any action taken by the franchisor, but because of the consumer's computer problems or because of system failures. Accordingly, proposed section 436.7(f) makes clear that technical failures beyond the franchisor's reasonable control (such as system crashes) will not render a document inaccessible. Further, the Commission recognizes that franchisors are under obligations to update their disclosure documents periodically. A requirement that disclosures remain accessible indefinitely arguably may result in franchisors having to post multiple versions of its disclosures on the Internet to ensure that each prospective franchisee has continued access to his or her particular version. The Commission doubts that the costs and burdens of such a requirement would be outweighed by any benefits. Accordingly, proposed section 436.7(f)

[234] See 63 FR at 14531.

[235] For a description of electronic verification, see Gerdes, 6 Nov 97 Tr at 79–82; Jeffers, *id.* at 86–87.

[236] The Federal Reserve has come to a similar conclusion. See 63 FR at 14530. See also Bundy, 6 Nov 97 Tr at 129.

[237] This recommendation is consistent with the current Rule's prohibition on adding any material to the disclosure document beyond what is specifically required by the Rule. 16 CFR 436.1(f).

also makes clear that updating disclosure documents on the Internet will not render a previously posted disclosure document inaccessible. As long as a prospective franchisee has access to the franchisor's current disclosure document, that should suffice.

g. Proposed Section 436.7(g): Record Retention

Proposed section 436.7(g) requires franchisors who furnish electronic disclosures under the Rule to comply with a modest recordkeeping requirement. Specifically, franchisors must maintain a specimen copy of each materially different version of their disclosures for three years. The Commission believes that a limited record retention requirement is necessary for effective law enforcement. For example, one commenter observes that ''only about 24 to 25 percent of [franchise systems] are likely to be here five years from now.'' [238] Franchisors merge, go into bankruptcy, sell their assets, and maintenance of old records becomes very difficult, ''particularly if they are available only in electronic form.'' He further observes that ''[e]lectronic form of documents is evolving at such a rapid clip that something that is available in Microsoft Word 97 today may not be readable in Microsoft Word 99 tomorrow.'' [239] In short, he advocates a recordkeeping requirement in order to enable a franchisee to be able to show (and ultimately prove) what form of document he or she relied upon.

The Commission agrees. While the Rule currently does not require a franchisor to keep copies of its disclosure documents, it does require a franchisor to make copies of its disclosures (and financial performance claims substantiation) available to the Commission upon request. Franchisors also routinely keep copies of their disclosure documents, without federal oversight, for their own business records [240] and to comply with state record retention requirements. It is not unreasonable to expect franchisors to retain copies of their disclosures in order to mount a defense to a Commission, state, or private action. Moreover, any minimal recordkeeping costs associated with electronic disclosures would be substantially outweighed by the vast savings in reduced, or eliminated, printing and distribution costs associated with disseminating paper disclosure documents.

11. Proposed Section 436.8: Instructions for Updating Disclosure Documents

The last of the instructions sections—proposed section 436.8—concerns disclosure updating requirements. With one exception, as discussed below, the updating requirements are identical to the instructions already contained in the current Rule.

a. Proposed Section 436.8(a): Annual Updates

Proposed section 436.8(a) sets forth the basic updating requirement that franchisors must revise their disclosures 90 days after the close of the fiscal year. This instruction is identical to the current Rule updating requirement set forth at 16 CFR 436.1(a)(22).

b. Proposed Section 436.8(b) Quarterly Updates. Proposed section 436.8(b) provides that franchisors must update their disclosure documents to reflect any material changes on at least a quarterly basis. This instruction is also identical to the current Rule updating requirement set forth at 16 CFR 436.1(a)(22).

c. Proposed Section 436.8(c): Material Change Disclosures

Proposed section 436.8(c), a new provision, would enhance the current Rule's updating provisions to require franchise sellers to notify prospective franchisees about any material changes that may have occurred since the prospective franchisees received their disclosure documents. For example, it is possible that a franchisor may file for bankruptcy, lose a class action suit that might affect its ability to continue in business, or undergo some other material change since the last quarterly update. Currently, franchisors must notify prospective franchisees only about material changes underlying a financial performance representation.[241] To prevent fraud, proposed section 436.8(c) makes clear that it is an omission of material information in violation of section 5 of the FTC Act for a franchisor to fail to alert prospective franchisees about material changes when it knows that prospective franchisees are relying on the incomplete information contained in a disclosure document. Franchise sellers, therefore, must alert prospective franchisees about any material changes since the last quarterly update when they furnish the disclosure document. Franchise sellers must also alert prospective franchisees to any additional material changes when they deliver a copy of the completed franchise agreement at least five days before the franchise agreement is executed. This proposed revision of the Rule's updating requirements does not require franchisors actually to amend their disclosure documents, which might impose unwarranted costs. Rather, a franchisor must simply notify the prospective franchisee about any such material changes. An oral statement or faxed letter, for example, would be sufficient.

d. Proposed Section 436.8(d): Updated Audited Information

Proposed section 436.8(d) retains the Commission's current policy that audited information in a disclosure document need not be re-audited on a quarterly basis. Rather, a franchisor can update its audited disclosures by including unaudited information, provided the franchisor discloses that the information is unaudited. This instruction is identical to the current Rule updating requirement set forth at 16 CFR 436.1(a)(22).

12. Proposed Section 436.9: Exemptions

The Commission proposes to retain all of the existing Rule exemptions and to add several additional exemptions. At the same time, the Commission proposes to eliminate the exclusions currently found at 16 CFR 436.2(a)(4)(i)–(iv).[242] In the SBP, the Commission recognized that these four relationships are not franchises, but might be perceived as falling within the definition of a franchise.[243] To avoid any confusion, the Commission expressly excluded these four relationships from Rule coverage. The Commission believes that these exclusions no longer serve a useful purpose. While there may have been some confusion about the extent of Rule coverage at the time the Commission promulgated the Franchise Rule nearly twenty years ago, the Commission does not believe that such confusion exists today. Since the Rule went into effect in the 1970s, the franchise community has become very familiar with the Rule's requirements, including the definition of the term franchise. In eliminating the four exemptions, however, the Commission is not signaling a substantive change in Commission policy. Rather, the elimination of the

[238] Bundy, 6 Nov 97 Tr. at 58.

[239] *Id.*

[240] See Houston-Aldridge, 6 Nov 97 Tr at 130–31.

[241] *See* 16 CFR 436.1(e)(6).

[242] The Rule currently excludes four non-franchise relationships: (1) Employer-employee and general partnership relationships; (2) relationships created by membership in a cooperative association; (3) relationships in a testing or certification service; and (4) ''single'' license relationships.

[243] SBP, 43 FR at 59708.

exclusions is simply part of the Commission's general effort to streamline the Rule.

a. Proposed Section 436.9(a): Minimum Payment Exemption

Proposed section 436.9(a) is substantially similar to the Commission's current $500 minimum investment exemption found at 16 CFR 436.2(a)(3)(iii). This exemption ensures that the Rule ''focuses upon those franchisees who have made a personally significant monetary investment and who cannot extricate themselves from the unsatisfactory relationship without suffering a financial setback.'' [244] Proposed section 436.9(a) also enhances the current minimum payment exemption by incorporating the Commission's long-standing policy exemption for inventory purchases into an express Rule exemption. In the Final Interpretive Guides, the Commission stated that, as a matter of policy, it would exempt from the Rule's ''required payment'' definitional element reasonable amounts of inventory purchased at bona fide wholesale prices for resale.[245] In adopting this policy, the Commission recognized that it is often difficult to distinguish between inventory purchases that are required by contract or by practical necessity and those that are merely discretionary. The Commission noted, however, that franchisors could disguise up-front franchisee fees by inflating the level of inventory franchisees must purchase and/or inflating the purchase price. To reduce this fear, the Commission limited the policy exemption to reasonable amounts of inventory (as determined by standard industry practices) and purchases at bona fide wholesale prices.[246] The proposed exemption, therefore, does not change Commission policy, but makes it clear that traditionally non-franchised businesses can sell inventory without the fear of triggering the Rule's minimum payment requirement.

b. Proposed Section 436.9(b): Fractional Franchise Exemption

Proposed section 436.9(b) retains the fractional franchise exemption currently found at 16 CFR 436.2(a)(3)(i). However, the definition of the term ''fractional franchise'' has been modified slightly, as discussed above at Section C.4.f.

[244] SBP, 43 FR at 59704.

[245] Final Interpretive Guides, 44 FR at 49967.

[246] *Id.*

c. Proposed Section 436.9(c): Leased Department Exemption

Proposed section 436.9(c) retains the leased department exemption currently found at 16 CFR 436.2(a)(3)(ii). However, the Commission has streamlined the exemption by creating a clearer and shorter definition of the term ''leased department,'' as discussed above at Section C.4.m.

d. Proposed Section 436.9(d): Petroleum Marketers and Resellers Exemption

Proposed section 436.9(d) adds a new exemption for petroleum marketers and resellers covered by the Petroleum Marketing Practices Act (''PMPA''). 15 U.S.C. 2801. In 1980, the Commission granted a petition for an exemption from the Rule filed by several oil companies and oil jobbers, pursuant to section 18(g) of the FTC Act.[247] Specifically, the Commission stated that the Rule ''shall not apply to the advertising, sale or other promotion of a 'franchise,' as the term 'franchise' is defined by the [PMPA].'' [248] In considering the petition, the Commission noted that the most frequently cited complaint voiced in the record about the petroleum franchise industry concerned termination and renewal practices. After the close of the Commission's franchise rulemaking record, Congress passed the PMPA, which specifically addressed that complaint, requiring, among other things, pre-sale disclosure of franchisees' termination and renewal rights. Accordingly, the Commission concluded that the Franchise Rule was largely duplicative of the PMPA and related federal regulations.

Since 1980, Commission staff has received only isolated complaints regarding abuses in the relationship between petroleum franchisors and their franchisees, and the Commission has no reason to believe that a pattern of abuse is likely to develop in the near future. Moreover, even if such abuses did occur, the Commission has already committed itself to handling the matter through an industry-specific rulemaking.[249] For these reasons, the Commission proposes to incorporate the 1980 policy exemption into the Rule as an express Rule exemption.

[247] See 45 FR 51765 (August 5, 1980).

[248] *Id.* at 51766.

[249] At the time the Commission granted the petition, it recognized that circumstances may change in the industry which would warrant a fresh review:

[I]f circumstances change in the future and evidence of renewed misrepresentations in the ale of petroleum franchises reappears on a significant scale, a new rulemaking proceeding may be undertaken that is tailored to the specific needs of the industry. In the interim, if isolated abuses occur, they will be subject to the adjudicative procedures and remedies provided by section 5 of the FTC Act.

e. Proposed Section 436.9(e): Sophisticated Investor Exemptions

Proposed section 436.9(e) sets forth two new exemptions, which collectively can be referred to as ''sophisticated investor'' exemptions: (1) the large investment exemption; and (2) the large corporate franchisee exemption. In response to the ANPR, several commenters urge the Commission to adopt a sophisticated investor exemption to the Rule.[250] These commenters note that franchising today may involve heavily-negotiated, multi-million dollar deals between franchisors and highly sophisticated individual and corporate franchisees who are represented by counsel. In the course of such deals, the franchisees often demand and receive information from the franchisor that equals or exceeds the disclosures required by the Rule. They contend that these are not the kinds of franchise sales that the Rule was intended to cover. Commenters further assert that the Rule's mandatory waiting requirements (currently 10 business days to review disclosures and five business days to review completed contracts) impose unnecessary costs and add unwarranted delay in the high-paced negotiation process, where parties often are anxious to cement their deals quickly to beat out the competition.[251] At the same time, some commenters voice concern about the breath of any such exemption. They fear that investors may appear to be sophisticated only because of a certain net worth or prior business experience, but may have limited knowledge of the risks inherent in operating the specific franchise being offered. In short, they contend that the Commission should protect the wealthy, but inexperienced.[252]

Based upon the record, the Commission agrees that appropriate exemptions for sophisticated investors are warranted. The Commission has long recognized that the Rule's

[250] See Tifford, Comment 78, at 2; Duvall & Mandel, Comment 114, at 2–3; Cendant, Comment 140, at 2; Kaufmann, 18 Sept 97 Tr at 190; Wieczorek, *id.* at 192; Forseth, *id.* at 194–95. See also Caruso, Comment 118, at 1. Some commenters did not advance a sophisticated investor exemption, but did not oppose it. See Bundy, 6 Nov 97 Tr at 19–20.

[251] See Kaufmann, 18 Sept 97 Tr at 165, 170–71; Wieczorek, *id.* at 187–88 and 6 Nov 97 Tr at 26. One Commenter notes that while franchisors can file individual petitions for exemptions to the Rule under section 18(g), the process is costly and the delay involved often renders this approach an unviable option. Duvll & Mandel, Comment 114, at 16.

[252] See Zarco & Pardo, Comment 134, at 4–5; Kezios, 6 Nov 97 Tr at 47–48; Bundy, *id*, at 48–49.

protections may be unnecessary where the likelihood of abuse does not exist. Proposed section 436.9(e)(1) would exempt franchise sales where the investment totals at least $1.5 million. The Commission believes that one measure of ''sophistication'' is the size of the investment. In granting petitions for exemption from the Franchise Rule under section 18(g) of the FTC Act, the Commission has noted several factors that, when present, suggest that application of the Rule may be unwarranted, including the size of the investment. For example, in granting the Petition submitted by the Automobile Importers of America, Inc.,[253] the Commission observed:

> Prospective motor vehicle dealers make extraordinarily large investments. As a practical matter, investments of this size and scope involve relatively knowledgeable investors or the use of independent business advisors, and an extended period of negotiation. The record is consistent with the conclusion that the transactions negotiated by such knowledgeable investors over time and with the aid of business advisors produce the pre-sale information disclosure necessary to ensure that investment decisions are the product of an informed assessment of the potential risks and benefits of the proposed investment.

Id. at 51,764.

The Commission believes that a $1.5 million threshold is sufficient to exempt sophisticated investors, yet protect ordinary consumers who seek to purchase a franchise. Consumers who have $1.5 million available to invest in a franchise are likely to be experienced business persons.[254] Further, an investment of $1.5 million most likely would involve the purchase of a single large investment—such as a hotel or the most expensive restaurant location—or the purchase of multiple, less costly units. Purchasers of multiple units are more likely to be persons with significant business experience in light of the management demands such as hiring staff and ensuring efficient operation of the outlets. In addition, purchasers of multiple units are likely to include existing franchisees with significant prior experience with the franchisor. These experienced investors are not likely to purchase a franchise on impulse, are more likely to negotiate over the terms of any contract, and are more resistant to high pressure sales representations.

Proposed section 436.9(e)(1) has additional safeguards beyond the $1.5 million threshold to ensure that average consumers will be protected. First, the proposed exemption makes clear that funds obtained from the franchisor (or an affiliate) cannot be counted toward the $1.5 million threshold. Most purchasers of a franchise, or group of franchises, that require a $1.5 million level of investment will have to turn to banks or other sources of financing. Lenders most likely will ensure that the investor has conducted a due diligence investigation of the offering before approving any loan.[255] This assurance, however, is absent if the source of any funds is the franchisor or an affiliate. Indeed, a prospective franchisee who is inclined to purchase without a thorough examination of the proposed franchise deal may also be lulled into making a large investment when offered attractive financing by the franchisor.

Second, the proposed large investment exemption requires the prospective franchisee to sign an acknowledgment that the franchise sale is exempt from the Franchise Rule because the prospective franchisee will be investing more than $1.5 million. This requirement will reduce the probability that the franchisor may misrepresent the cost of the franchise. It will also provide a paper trail in the event an enforcement action becomes necessary.

While the Commission believes that the proposed large investment exemption is proper, it nonetheless solicits additional comment on this issue. Specifically, the Commission seeks comment on whether the proposed $1.5 million threshold is too high or low and, if so, what would be an alternative threshold, including any specific facts or data that would support such an alternative.

Proposed section 436.9(e)(2) would exempt from the Rule the sale of franchises to large corporations, namely those that have been in business for at least five years that have a net worth of at least $ 5 million.[256] There appears to be little risk for abuse where a franchisor sells a single or multiple franchises to a large corporate franchisee. Such transactions often are heavily negotiated by sophisticated counsel who have significant experience in the franchise industry. Even if a large corporation does not have prior experience in franchising specifically, it is reasonable to assume that it can protect its own interests when negotiating for the purchase of a franchise.[257] Nonetheless, the Commission solicits additional comment on the proposed large corporation exemption. Specifically, the Commission seeks comment on whether the proposed 5 years and $5 million thresholds are sufficient and solicits any alternatives.

Finally, proposed section 436.9(e) states that the Commission may publish revised thresholds for the sophisticated investor exemption once every four years to adjust for inflation. While the Commission believes that the proposed thresholds are sufficient today, it is quite possible that in a few years these thresholds will be too low because of inflation. Accordingly, the Commission proposes to publish revised thresholds in the **Federal Register** once every four years.[258] A four-year adjustment period appears to strike the right balance

[253] 45 FR 51763 (August 5, 1980).

[254] See Wieczorek, 6 Nov 97 Tr at 43.

[255] Lenders are also likely to require the prospective investor to have sufficient equity capital in order to qualify for a loan. Indeed, with an investment of $1.5 million, a lending institution may require equity of several hundred-thousand dollars before considering a loan. This lending-industry requirement further ensures that, as a practical matter, the proposed exemption would be limited to sophisticated investors only.

[256] No state has a comparable exemption. Several states—including California, Indiana, Maryland, New York, North Dakota, Rhode Island, South Dakota, and Washington—have an exemption from registration for ''experienced franchisors,'' focusing on the franchisor, rather than on the prospective investor. To qualify for the exemption, a franchisor must typically have a net worth of at least $5 million and have had 25 franchise locations in operation during the previous five years. See generally Duvall & Mandel, Comment 114, at 3–4.

[257] See Kaufmann, 18 Sept 97, Tr at 190. The proposed large corporate-franchisee exemption is also a logical extension of the rule's fractional franchise exemption. The fractional franchisee exemption focuses narrowly on purchasers who wish to expand their product lines, have experience in the field, and face a minimal financial risk. For example, a small grocery store owner probably would be a fractional franchisee if he or she became a snack food distributor. Under the current rule, however, a hospital purchasing the same snack food distributorship probably would not be deemed a fractional franchisee because of a lack of prior experience in food sales. This is an illogical result, given the hospital's greater financial resources and bargaining power. Hospitals and other large institutions such as airports and universities are hardly the type of ''consumers'' that the Commission needs to protect. See Kirsch, 18 Sept 97 Tr at 198–99. But see Kezios, *id.* at 191–92.

[258] This inflation adjustment proposal is modeled after the Appliance Labeling Rule, 16 CFR 305, which sets forth ranges of estimated annual energy costs and consumption for various appliances. Because energy cost and appliance efficiencies fluctuate, the Commission adjusts the label requirements periodically by publishing in the **Federal Register** new costs and ranges, which then become part of the rule's labeling requirements. To that end, section 305.9(b) of the Appliance Labeling Rule provides: ''Table 1, above, will be revised on the basis of future information provided by the Secretary of the Department of Energy, but not more often than annually.'' The proposal is also consistent with the Commission's procedures for adjusting thresholds or other information in Commission-enforced statutes. For example, the Commission publishes in the **Federal Register** annual adjustments for determining illegal interlocking directorates in connection with section 19(a)(5) of the Clayton Act, as well as adjustments to civil penalties at least once every four years under the Debt Collection Improvement Act of 1966. See 61 FR 54549 (October 21, 1996).

between ensuring that the thresholds keep up with inflation and relieving the Commission of the expense and burden of more frequent adjustments. Nonetheless, the Commission solicits comment on whether a periodic inflation adjustment is warranted, the costs and benefits of a four-year adjustment period, as well as any alternatives.

f. Proposed Section 436.9(f): Officers and Owners Exemption

Proposed section 436.9(f) would exempt sales to franchisees who are (or recently have been) officers or owners of the franchisor.[259] There does not appear to be any need for disclosure in such circumstances because we can reasonably assume that the prospective franchisee already is familiar with every aspect of the franchise system and the associated risks. Further, in some instances, a company may wish to offer units to its owners or directors only. If not exempt, these companies would have to go through the burden and expense of creating a disclosure document for isolated sales to company insiders. To ensure that individuals qualifying for the exemption have recent and sufficient experience with the franchisor, the proposed exemption is limited to individuals who have been associated with the franchisor within 60 days of the sale and who have been within the franchise system for at least two years.

g. Proposed Section 436.9(g): Oral Contracts

The final exemption, proposed section 436.9(g), retains the current exemption for oral contracts found at 16 CFR 436.2(a)(3)(iv). In the SBP, the Commission recognized that problems of proof make it difficult to regulate purely oral agreements. In addition, the record indicated that oral arrangements are usually informal and require only nominal investments.[260]

13. Proposed Section 436.10: Additional Prohibitions

The next section of the Proposed Rule—proposed section 436.10—sets forth additional prohibitions. Proposed section 436.10 differs from the current Rule prohibitions in several respects. First, it updates the Rule's provisions regarding financial performance representations made in the general media to include representations on the Internet and other advertising vehicles. Second, it prohibits franchisors from including integration clauses in their contracts that would effectively absolve them from liability for statements made in their disclosure documents. Finally, it makes clear that the use of paid references (shills) is an unfair and deceptive act or practice in violation of section 5 of the FTC Act.

a. Proposed Section 436.10(a): No Contradictory Statements

Proposed section 436.10(a) prohibits franchisors from making any statements that are contradictory to those set forth in their disclosure documents. Except for minor editing, this is identical to the current Rule prohibition set out at 16 CFR 436.1(f).

b. Proposed Section 436.10(b): Refunds

Proposed section 436.10(b) prohibits franchisors from failing to honor their refund guarantees. This is similar to the comparable Rule provision found at 16 CFR § 436.1(h). However, the Commission proposes to modify the prohibition slightly. The current section 436.1(h) prohibits franchisors from failing ''to return any funds or deposits in accordance with any conditions disclosed pursuant to paragraph (a)(7) of this section.'' Thus, the provision is limited to instances where the franchisor makes an express refund promise in the disclosure document itself. The Commission's law enforcement experience indicates, however, that in some instances franchisors do not make any specific promise in the disclosure document, but do so either in the franchise agreement or in a separate contract or letter of understanding. Proposed section 436.10(b) makes clear that the failure to honor any written refund promise in connection with a franchise sale will constitute a Rule violation.[261]

c. Proposed Section 436.10(c): Written Substantiation

Proposed section 436.10(c) prohibits franchisors from failing to make available to prospective franchisees and to the Commission upon reasonable request written substantiation for any financial performance representations made in an Item 19 disclosure. Except for minor editing, this provision is identical to the current Rule provision found at 16 CFR 436.1(b) and 436.(1)(c).

d. Proposed Section 436.10(d): Financial Performance Statements

Proposed section 436.10(d) addresses the dissemination of financial performance representations outside of a disclosure document, including the general media, Internet advertising, and unsolicited commercial E-Mail. In the ANPR, the Commission questioned the continuing need for the general media claims provision currently set out at 16 CFR 436.1(e).[262] In response, no commenter raised any concerns about the Rule's existing approach toward general media financial performance claims. On the other hand, a few commenters note the proliferation of financial performance claims in the general media. For example, the AFA states:

> You have to look no further than last Thursday's edition of the Wall Street Journal to see examples of misleading advertisements with regard to earnings potential. For example, one franchisor consistently advertises by saying ''60% to 80% gross profit margins.'' An advertisement for a master franchisee states ''a proven method of making a fortune.'' * * * Consumers see the advertisement first, the franchise agreement second and then the franchisor's salesperson says something like ''we are prohibited by law from making any earnings claims.'' But the damage has already been done—the consumer has seen the ad.

AFA, Comment 62, at 6.[263]

Based upon the record, the Commission believes that disclosure requirements for financial performance representations made in the general media continue to serve a useful purpose. The Commission's law enforcement experience also demonstrates that such claims are prevalent and continue to attract a number of consumers.[264] Indeed, the communications age has ushered in new advertising media such as the Internet and unsolicited commercial E-mail. For example, many companies have home pages that contain express financial performance representations and thousands of consumers receive ''spam'' E-mail messages encouraging them to invest in various opportunities.[265]

[259] The proposed exemption is modeled after nearly identical language in California's franchise statute. Washington and Rhode Island have similar exemptions. See Duvall & Mandel, Comment 114, at 21.

[260] SBP, 43 FR at 59708.

[261] One commenter, Dady & Garner, suggests that franchisees should always receive a refund (minus actual costs) if they never actually open or operate an outlet. Dady & Garner, Comment 127, at 4. The Commission believes that the substantive terms and conditions of refunds are a matter of contract between the parties. As long as the terms and conditions of any refund policy are spelled out in the disclosure document or franchise agreement, that appears to be sufficient.

[262] 62 FR at 9122.

[263] See also Winslow, Comment 92, 1–2.

[264] For example, the Commission's 1995 Project Telesweep, in which the FTC and state law and local enforcement authorities filed nearly 100 law enforcement actions, was based upon the finding that many franchise and business opportunity sellers seek to attract consumers through advertisements, in particular advertisements with outrageous earnings representations.

[265] Indeed, the Commission has testified before the Senate Commerce, Science and Transportation Committee that ''the proliferation of deceptive,

Accordingly, guidance concerning financial performance representations in traditional and new advertising media is clearly warranted.

Proposed section 436.10(d) prohibits any franchise seller from making a financial performance representation outside of a disclosure document unless the seller: (1) has a reasonable basis for the claim; (2) has written substantiation for the claim at the time it is made; (3) includes the representation in Item 19 of its disclosure document; (4) includes the number and percentage of the measured outlets that support the claim from its Item 19 disclosure; and (5) includes a conspicuous admonition that a new franchisee's individual financial results may differ from those stated in the representation. In short, a franchisor may make a financial performance claim in advertising materials only if the claim is consistent with, and includes the limited required information taken from, its Item 19 disclosures made to prospective franchisees.

The Commission finds that the proposed section 436.10(d) approach to financial performance claims greatly streamlines the current Rule provision and should make it easier for franchisors to disseminate truthful financial performance information. For example, under the current Rule approach, franchisors making general media performance representations are required to give a prospective franchisee a separate earnings claim document that sets forth the claim in detail and, depending upon the nature of the claim, specific cautionary language. Proposed section 436.10(d) would eliminate these requirements. The Commission believes that the Item 19 disclosure requirements, in the format described above, are sufficient to provide meaningful performance information to prospective franchisees without the need for a separate disclosure document.

e. Proposed Section 436.10(e): Disclaimers

Proposed section 436.10(e), a new prohibition, addresses the issue of contract integration clauses. It would prohibit franchisors from disclaiming liability for, or causing franchisees to waive reliance on, statements made in their disclosure documents. In response to the ANPR, a number of franchisees and their representatives commented that franchisors routinely seek to disclaim liability for their pre-sale disclosures through the use of contract integration clauses. These clauses effectively force franchisees to waive any rights they have to rely on pre-sale disclosures made to them during the sales process. For example, one commenter states:

> In virtually every lawsuit I have filed for franchisees alleging fraud, franchise disclosure, or unfair or deceptive practices (under California law since the FTC rule does not provide a private right of action), counsel for the franchisor defendants have defended the action on lack of justified reliance. Franchisors and their counsel have systemically written the agreements to strip franchisees of all fraud claims and rights the minute the agreement is signed by sophisticated integration, no representation and no reliance clauses * * *. The Commission should provide that reliance on the disclosure document and other representations made in the sale of a franchise is per se justified.[266]

Lagarias, Comment 125, at 4.

Another commenter adds that integration clauses are not well understood and their impact is not appreciated at all until long after the franchise purchasing commitment is made.[267]

Based upon the record, the Commission does not recommend banning the use of integration clauses as a deceptive or unfair act or practice. Integration clauses can serve a useful purpose, ensuring that prospective franchisees rely only on information authorized by the franchisor or within the franchisor's control. For example, a franchisor reasonably may seek to disclaim liability for unauthorized claims made by rogue salespersons, statements made by former or current franchisees, or even unattributed statements found in the trade press.

The Commission, however, believes it is a violation of section 5 for franchisors to use integration clauses essentially to shield themselves from liability for false or deceptive statements made in their disclosure documents. The Commission has long recognized that the integrity of a franchisor's disclosure document is critical to prospective franchisees. For that reason, disclosures must be complete, accurate, legible, and current. The Rule also prohibits franchisors from making any statements that contradict those in a disclosure document. The use of integration clauses to disclaim liability for required disclosures undermines the very purpose of the Rule, which is to prevent fraud and abuse by ensuring that prospective franchisees have complete, truthful, material information with which to make a sound investment decision.[268] Accordingly, proposed section 436.10(e) will better ensure that prospective franchisees will receive complete and truthful pre-sale disclosures.

At the same time, the Commission recognizes that a prohibition on disclaimers or waivers may have the unintended effect of chilling the parties' willingness to negotiate freely franchise contract terms. A franchisor may interpret an anti-disclaimer prohibition to mean that it is bound by the terms and conditions set forth in a disclosure document only and that any modification will constitute a Rule violation. To rectify this potential misinterpretation, proposed section 436.10(e) specifically provides that a prospective franchisee can agree to terms and conditions that differ from those specified in a disclosure document if: (1) the franchise seller identifies the changes; (2) the prospective franchisee initials the changes in the franchise agreement; and (3) the prospective franchisee has five days to review the completed revised contract before the sale is consummated, consistent with proposed section 436.2(a)(2) described above.

f. Proposed Section 436.10(f): Shills

Proposed section 436.10(f) adds a prohibition against franchisors' use of phony references or ''shills.'' Proposed section 436.10(f) would make it a Rule violation for a franchisor to misrepresent that any person has actually purchased or operated one of the franchisor's franchises. It also would make it a Rule violation for a franchisor to misrepresent that any person can give an independent and reliable report about the experience of any current or former franchisee. The Commission's law enforcement experience demonstrates that, in many instances, scam artists use shill references in order to bolster their earnings and success claims.[269] Indeed, shills are often the

unsolicited commercial E-mail * * * could undermine consumer confidence and slow the growth of Internet commerce,'' noting that the FTC has collected over 100,000 pieces of unsolicited commercial E-mail and receives up to 1,500 new pieces daily. See FTC News, Growth of Deceptive ''Spam'' Could Undermine Consumer Confidence in Internet (June 17, 1998).

[266] See also Manuszak, Comment 13, at 1; Bell, Comment 30, at 1; Sibent, Comment 41, at 1 (and 19 identical comments); AFA, Comment 62, at 3; Bundy, Comment 119, at 2; Selden, Comment 133, Appendix B, at 2; Zarco & Pardo, Comment 134, at 3.

[267] Selden, Comment 133, Appendix B, at 2.

[268] Integration clauses effectively requre franchisees to waive reliance on statements made in the disclosure document. The Commission has long disfavored the waiver of rights afforded by Commission trade regulation rules. See Used Care Rule, 16 CFR 455 at § 455.3(b), Credit Practices Rule, 16 CFR 444 at § 444.2; Cooling-Off Period Rule, 16 CFR 429 at § 429.1(d); and Ophthalmic Practices Rule, 16 CFR 456 at § 456.2(d).

[269] E.g., *FTC* v. *Hart Mktg. Enter., Inc.*, No. 98–222–CIV–T–23 (M.D. Fla. 1988); FTC v. Stillwater

Continued

glue that holds the scam together by allaying consumers' concerns about the investment.[270]

14. Proposed Section 436.11: Other Laws, Rules, and Orders

Proposed section 436.11 addresses the effect the revised Rule may have on other Commission laws and outstanding Commission orders. It also discusses preemption of state franchise laws that may be inconsistent with this Rule.

a. Proposed Section 436.11(a): Effect on Other Commission Laws

Proposed section 436.11(a) makes clear that the Commission does not express any opinion about the legality of any practices that might be disclosed in a franchisor's disclosure document. The current Rule contains a comparable provision at note 1 at the end of the Rule. In the SBP, the Commission recognized that some of the Rule's provisions may require franchisors to disclose practices that may raise antitrust issues.[271] The provision makes clear that the Commission reserves the right to pursue violations of antitrust laws even if a franchisor discloses the violation in complying with the Rule's disclosure requirements. In short, disclosure does not create a safe harbor for franchisors engaging in otherwise unlawful conduct. At the same time, proposed section 436.11(a) clarifies that compliance with the Rule's specific disclosure requirements will not shield a franchisor from the broader anti-deception provision of section 5 of the FTC Act.[272] The Commission finds that this clarification is critical especially in an age of quickly developing technologies. The Commission cannot now predict what information about the franchise relationship will be material in the future, in particular franchisors' and franchisees' rights and obligations concerning issues such as the use of Internet home-pages, electronic advertising, and electronic commerce. Franchisors' disclosure obligations under section 5 must remain somewhat flexible to ensure that franchisors continue to provide prospective franchisees with all material information as new technologies and marketing practices emerge.

b. Proposed Section 436.11(b): Effect on Prior Commission Orders

Since the Rule went into effect in the 1970s, the Commission has brought over 150 franchise and business opportunity cases. The Commission recognizes that it is possible that the revised Rule may impose disclosure or other obligations that are inconsistent with the terms of existing Commission orders. To reduce any potential conflicts between existing orders and provisions of the revised Rule, proposed section 436.11(b) would permit firms under order to petition the Commission for relief consistent with the provisions of the revised Rule.

c. Proposed Section 436.11(c): Preemption

Proposed section 436.11(c) retains the preemption provision currently found at note 2 at the end of the Rule.[273] It provides that the Commission does not intend to preempt state or local franchise practices laws, except to the extent of any inconsistency with the Rule. It provides further that a law is not inconsistent if it affords prospective franchisees equal or greater protection, such as registration of disclosure documents or more extensive disclosures.

d. Proposed Section 436.12: Severability

Proposed section 436.12 retains the severability provision currently found at 16 CFR 436.3. This provision makes clear that, if any part of the rule is held invalid by a court, the remainder will still be in effect.[274]

Section D—Rulemaking Procedures

Pursuant to 16 CFR 1.20, the Commission has determined to use the following rulemaking procedures. These procedures are a modified version of the rulemaking procedures specified in section 1.13 of the Commission's Rules of Practice.

First, the Commission intends to publish a single Notice of Proposed Rulemaking. The comment period will be open for 60 days, followed by a 40-day rebuttal period. Second, pursuant to section 18(c) of the Federal Trade Commission Act,[275] the Commission will hold hearings with cross-examination and rebuttal submissions only if an interested party requests a hearing by the close of the comment period. Parties interested in a hearing must also submit within the comment period the following: (1) a comment on the NPR; (2) questions of fact in dispute; and (3) a summary of the expected testimony. Parties wishing to cross-examine witnesses must also file a request by the close of the comment period. If requested to do so, the Commission may also consider holding one or more informal public workshop conferences in lieu of hearings. After the close of the comment period, the Commission will publish a notice in the **Federal Register** stating whether hearings (or a public workshop conference in lieu of hearings) will be held and, if so, the time and place of the hearings and instructions for those wishing to present testimony or engage in cross-examination of witnesses.

Finally, after the conclusion of the rebuttal period, and any hearings or additional public workshop conferences, Commission staff will issue a Report on the Franchise Rule (''Staff Report''). The Commission will announce in the **Federal Register** the availability of the Staff Report and will accept comment on the Staff Report for a period of 60 days.

Section E—Communications to Commissioners and Commissioner Advisors by Outside Parties

Pursuant to Commission Rule 1.18(c)(1), the Commission has determined that communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor shall be subject to the following treatment. Written communications and summaries or transcripts of oral communications shall be placed on the rulemaking record if the communication is received before the end of the comment period on the staff report. They shall be placed on the public record if the communication is received later. Unless the outside party making an oral communication is a member of Congress, such communications are permitted only if advance notice is

Vending, Ltd., No. 97–386–JD (D.N.H. 1997); *FTC* v. *Unitel Sys., Inc.*, No. 3–97CV1878–D (N.D. Tex. 1997); *FTC* v. *Southeast Necessities Co., Inc.*, No. 6848–CIV–Hurley (S.D. Fla. 1994); *Car Checkers of America*, Bus. Franchise Guide (CCH) ¶ 10,163, at 24,042. Indeed, in two actions, the Commission named a shill in its complaint, charging each with violating section 5 of the FTC Act. See *FTC* v. *Vendors Fin. Serv., Inc., No. 98–N–1832 (D. Colo. 1998); FTC* v. *Urso*, Bus. Franchise Guide (CCH) ¶ 11,410 (S.D. Fla. 1997). *Cf. O'Rourke*, Bus. Franchise Guide (CCH) ¶ 10,243 (evidence of shills admitted at contested Preliminary Injunction hearing).

[270] NCL reports that complaints about fake references are among the most common franchisee and business opportunity complaints its receives. NCL, Comment 35, at 2.

[271] SBP, 43 FR at 59719.

[272] See, *e.g.*, *FTC* v. *Hart Mktg. Enter. Ltd., Inc.*, No. 98–222-CIV-T–23 E (M.D. Fla. 1998); *FTC* v. *Inetintl.com*, No. 98–2140 (C.D. Cal. 1998); *FTC* v. *Maher*, No. WMN–98–495 (D.Md. 1998); *FTC* v. *Nat'l Consulting Group, Inc.*, No. 98 C 0144 (N.D. Ill. 1998).

[273] See 16 CFR 436, note 2. This approach is consistent with other Commission trade regulation rules. See, *e.g.*, Appliance Labeling Rule, 16 CFR 305 at § 305.17; Cooling-Off Rule, 16 CFR 429 at § 429.2; Mail Order Rule, 16 C.F.R. 435 at § 435.3(b)(2); R-Value Rule, 16 CFR 460 at § 460.23.

[274] This provision is comparable to the severability provisions in other Commission trade regulation rules. See, *e.g.*, 900-Number Rule, 16 CFR 308.8; Telemarketing Sales Rule, 16 CFR 310.8.

[275] 15 U.S.C. 57a(c).

published in the Weekly Calendar and Notice of ''Sunshine'' Meetings.[276]

Section F—Regulatory Analysis and Regulatory Flexibility Act Requirements

Section 22 of the FTC Act, 15 U.S.C. 57b, requires the Commission to issue a preliminary regulatory analysis for a rule amendment proceeding if it: (1) estimates that the amendment will have an annual effect on the national economy of $100,000,000 or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers. Based upon the record, the Commission has preliminarily determined that the proposed amendments to the Rule will not have such an effect on the national economy, on the cost or prices of franchised goods or services, or on covered businesses or consumers. To ensure that the Commission has considered all relevant facts, however, it requests additional comment on this issue.

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.*, requires an agency to conduct an analysis of the anticipated economic impact of proposed rule amendments on small businesses.[277] The purpose of a regulatory flexibility analysis is to ensure that the agency considers the impact on small entities and examines regulatory alternatives that could achieve the regulatory goals while minimizing burdens on small entities. The RFA does not apply if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities. As discussed below, the Commission believes that the proposed Rule amendments will not have a significant economic impact upon small businesses subject to the Rule. Accordingly, the Commission certifies that the RFA does not apply to the proposed Franchise Rule amendments.

The proposed Rule amendments affect pre-sale disclosure for the sale of franchises, and thus are likely to have an impact on all franchisors, some of which are small entities. Determining the precise number of small entities affected by these proposed amendments, however, is difficult due to the wide range of industries involved in franchising. The Commission estimates that there are approximately 5,000 franchisors selling franchises in the United States, including 2,500 business format and product franchisors and 2,500 business opportunity sellers. Most business opportunities and some established and start-up franchise systems would likely be considered small businesses according to the applicable SBA size standards. As a result, the Commission estimates that as many as 70% of franchisors, as defined by the Rule, are small entities.

Nonetheless, the proposed amendments do not appear to have a significant economic impact upon such entities. For the most part, the Commission's proposed amendments, as detailed throughout this notice, streamline and reorganize the Rule's disclosures based upon the UFOC Guidelines model. The Rule's revised disclosure requirements, therefore, would be more closely aligned with the UFOC format, which is considered by many to be the national franchise disclosure standard.[278] Other proposals seek to clarify and refine the Rule, for instance, by providing new or revised definitions. Accordingly, we would expect the vast majority of franchisors to incur only minor costs in adapting to the proposed revised Rule.[279]

Further, in a few instances, the proposed amendments will reduce franchisors' compliance costs. For example:

(1) Proposed Section 436.2

This provision limits the scope of the Rule to franchise sales in the United States, potentially relieving franchisors of substantial costs associated with preparing disclosure documents for international sales. Because franchisors selling internationally are generally large franchisors, we do not expect this proposal to have a significant effect on small entities.

(2) Proposed Section 436.9(e)

This provision sets forth new exemptions for sophisticated investors. These proposals similarly will reduce costs to those franchisors that are not likely to engage in fraudulent franchise sales. Since the proposed exemptions, by their terms, apply only to large investments, or investments made by very large companies, we would expect little if any impact on small entities.

(3) Proposed Section 436.7

This provision expressly permits franchisors to utilize the Internet and other electronic media to furnish disclosure documents. Allowing this distribution method could greatly reduce franchisors' compliance costs over the long run, especially costs associated with printing and distributing disclosure documents. As a result of this proposal, we expect franchisors' compliance costs will decrease over time, but do not expect the immediate impact to be substantial for most franchisors, in particular smaller franchise systems.

A few proposed Rule amendments, however, may increase franchisors' compliance costs. Nonetheless, the Commission expects these costs to be de minimis and to decline after the franchisors' initial fiscal year of complying with the proposed amended Rule. These proposals require franchisors to disclose additional material information that will shed light on the state of the franchise relationship or increase prospective franchisees' ability to conduct their own due diligence investigation of franchise offerings. While these proposals could potentially impact both large and small franchisors, we would expect any impact to be greatest with larger franchise systems. For example,

(1) Proposed Section 436.3.

This would require franchisors to include in the disclosure document's cover page references to several franchise resources, such as the Commission's Internet web site and its ''Consumer Guide to Purchasing a Franchise.'' These references assist prospective franchisees by notifying them of valuable information that is available on franchising. The provision applies to all franchisors, but at minimal cost.

(2) Proposed Section 436.5(c)

This provision would require franchisors to disclose pending litigation brought by franchisors against their franchisees involving the franchise relationship. Providing this additional information gives prospective franchisees further insight into the relationship between the franchisor and current and former franchisees. While this proposed change would apply to all franchisors, the impact is likely to be greatest on large systems, which by definition, have a significant number of franchisees, and therefore, a greater

[276] See 15 U.S.C. 57a(i)(2)(A); 45 FR 50814 (1980); 45 FR 78626 (1980).

[277] The RFA addresses the impact of rules on ''small entities,'' defined at ''small business,'' ''small governmental entities,'' and ''small [not-for-profit] organizations.'' 5 U.S.C. 601. The Franchise Rule applies only to the first type of entity.

[278] See *supra* at Section C.2.

[279] The franchisors who do not currently use the UFOC format would, of course, have greater compliance costs associated with adapting to a new format. However, the number of small entities within this subset does not appear to be substantial.

likelihood of pending litigation against franchisees.

(3) Proposed Section 436.5(t)(6)

This would require franchisors to make a prescribed statement about the use of ''gag clauses,'' if applicable. This proposed section also includes two additional optional disclosures, whereby franchisors are permitted to disclose the number and percentage of franchisees who have signed gag clauses, and the circumstances under which the gag clauses were signed. The economic impact of including the prescribed statement alone is negligible. Any additional costs will arise from franchisors' voluntarily complying with the Rule's optional provisions. Further, we can expect that larger systems are more likely than small entities to have a significant number of franchisees who have signed gag clause provisions.

(4) Proposed Section 436.5(t)(7)

This provision would require franchisors to disclose the names and addresses of trademark-specific franchisee associations that request to be included in the franchisors' disclosure document. This information would further assist prospective franchisees in investigating the franchise system, with virtually no change in the cost of preparing a disclosure document. The number of trademark-specific franchisee associations in any single franchise system is likely to be limited, especially in small franchise systems. Further, those associations that wish to be included in the disclosure document must provide the franchisor with all of the relevant information. Thus, including this information in a disclosure document should have very little impact on franchisors' document preparation costs.

For the reasons outlined above, the Commission believes that the proposed Rule amendments, taken as a whole, will likely have a negligible economic impact on franchisors' compliance costs, particularly for small franchisors. Presumably, compliance costs will vary with the size of the franchise system, with smaller franchisors incurring lower costs. The Commission estimates that franchisors will be required to spend between 1 and 5 hours to comply initially with the proposed revised disclosure requirements. At an average hourly billing rate of $250, the estimated cost to each system will be between $250 and $1,250. These amounts are not significant, especially in the context of franchisors' total yearly income and expenses. Further, any initial compliance costs will presumably decrease after the franchisor has revised its disclosures into the new format, and may well be offset by the Rule amendments' streamlined disclosure provisions.

Therefore, based on the available information, the Commission certifies that amending the Franchise Rule will not have a significant economic impact on a substantial number of small businesses. To ensure that no significant economic impact is being overlooked, however, the Commission requests comments on this issue. The Commission also seeks comments on possible alternatives to the proposed amendments to accomplish the stated objectives. After reviewing any comments received, the Commission will determine whether a final regulatory flexibility analysis is appropriate.

Section G—Paperwork Reduction Act

In this notice, the Commission proposes to alter some information collections contained in the Franchise Rule. As required by the Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3507(d), the Commission has submitted a copy of the information collections to the Office of Management and Budget (''OMB'') for its review. The current public disclosure and recordkeeping burden for collections of information contained in the Rule is 36,200 hours, approved under OMB Control No. 3084–0107, expiration date March 31, 1999. In that clearance submission, we estimated there were 3,613 franchisors. For the following calculations, we estimate that there are currently 5,000 franchise systems, consisting of 2,500 business format and product franchisors and 2,500 business opportunity sellers. The 1999 estimate of the cost to comply with the collections of information contained in the Rule, which includes both business format and product franchisors and business opportunities, is $19,925,000, and the total burden hours associated with these collections is currently projected to be 33,500.[280] As discussed below, we expect that the proposed Franchise Rule amendments will result in a large information collection savings, resulting primarily from eliminating business opportunities from Rule coverage.

The proposed amendments are designed to improve the Rule's organization and language, while also adding and changing some of the disclosure items. The proposals will impact franchisors differently, and, depending on the particular franchisor, may eliminate completely, reduce, or slightly increase, franchisors' compliance costs and burdens. Some of the more significant proposed amendments address the scope of the Franchise Rule, such as the proposal that separates the disclosure requirements for franchises from those of business opportunities. Other proposals offer new disclosure alternatives or requirements, and may impact franchisors' information collection. These include, for example, giving franchisors the option to use the Internet to furnish disclosure documents, and requiring franchisors to disclose information about known trademark-specific franchisee associations. Still other proposed amendments simply clarify certain existing disclosure requirements and should also provide an overall benefit to affected respondents without increasing costs. These clarifications, however, are not changes to the regulation and accordingly, they do not affect the collections of information contained in the regulation. Where proposals do change an information collection requirement, we discuss them below. Following is a summary of the more important proposed amendments to the Rule:

(1) Eliminating the Rule's Coverage of Business Opportunities

The proposed Rule will no longer apply to business opportunity sellers, who will be covered by a separate Rule. Thus, compliance costs for business opportunity sellers will drop to zero. In the past, we have estimated that approximately five hours are needed for business opportunities to comply with the information collection requirements contained in the Rule, and 15 hours are needed by franchisors. Eliminating business opportunities from the Rule would therefore result in a total savings of 12,500 labor hours (2,500 business opportunity sellers × 5 hours) and $3.125 million (12,500 hours × $250 per hour), as well as a savings of $3.75 million in printing costs (2,500 business opportunity sellers × $1,500 printing costs per company).

(2) Adopting Three Sophisticated Investor Exemptions

Proposed section 436.9(e) will exempt certain franchise offerings from the Rule's disclosure obligations. This proposal acknowledges that in very large transactions, and in transactions that involve certain owners and managers of the franchise system, the

[280] See 64 FR 1206 (January 8, 1999), announcing a request for a three year extension of the Franchise Rule's current information collection requirements. In that notice, the burden hour estimate was reduced from 36,200 to 33,500.

individuals involved have the experience and resources necessary to obtain important information about the franchise system independently. For those companies that qualify, these exemptions could eliminate all disclosure burdens. Assuming that 5 percent of franchise systems, or 125 firms, will be exempted, this will result in a reduction of 1,875 hours and $468,750 (1,875 × $250).

(3) Revising the Rule's Disclosure Requirements Based Upon the UFOC Guidelines Model

Revising the Rule based on the UFOC Guidelines model will benefit affected entities by bringing greater uniformity to franchise disclosure documents. In practice, the UFOC is the national standard. Because the proposed revised Rule format is patterned after the UFOC format, we estimate that franchisors' time and costs needed to comply with the Franchise Rule will be reduced by 1 hour, for a net savings of 2,375 hours and $593,750 (1 hour × $250 per 2,375 companies).

(4) Improving the Rule's Organization and Language

Deleting provisions that no longer serve a useful purpose and streamlining the Rule by adopting, for instance, a clear, bright line disclosure trigger, will make the Rule easier to understand and thus, foster easier compliance. Although the net savings under this proposal attributable to better organization and language are difficult to quantify, we believe that franchisors may save an average of 1 hour in compliance time at $250 per hour, for a net savings of 2,375 hours and $593,750

(5) Permitting Compliance Through the Internet and Other Electronic Media

Proposed section 436.7 could potentially reduce franchisors' compliance costs significantly, especially the costs and hours associated with printing and distributing disclosure documents, which at 6 hours per year, is the bulk of the current hourly burden estimate. Distributing documents electronically would eliminate the 6 hours per year for those franchisors no longer printing and mailing any of their disclosure documents. We approximate that 20 percent of franchisors, or 475 franchisors, will initially make use of this proposal, and each will distribute 50 of their 100 documents electronically, saving three hours per year. This will result in a reduction of 1,425 hours. This provision, however, will also require franchisors to adapt and distribute their electronic and summary documents. We estimate that those 475 franchisors will spend 1 hour to adapt and distribute their electronic and summary documents for an additional burden of 475 hours. Accordingly, franchisors' use of the electronic disclosure option will result in a net reduction of 950 hours.

Further, we have previously estimated that printing and mailing one disclosure document averages approximately $25.00 ($35 for franchisors and $15 for business opportunity sellers) and that 5,000 franchisors and business opportunity sellers print and distribute 100 copies annually, for a total cost of $12.5 million. We believe that the proposed amendment permitting electronic disclosure would reduce the distribution cost per electronic disclosure document to $5.00, for a total net savings of $712,500 (475 franchisors furnishing 50 electronic disclosure documents each at a saving of $30 per electronic disclosure document). We anticipate that time and costs will further decline in the future as more franchisors make greater use of electronic media.

(6) Disclosing Additional Resources and Information for Franchisees

Proposed section 436.3 requires the disclosure document's cover page to reference the Commission's Internet web site, where consumers can find resources on franchising and related topics. This information will provide significant benefit to consumers, as will requiring the cover page to note the availability of the *Commission's Consumer Guide To Purchasing a Franchise.* Another proposed amendment, proposed section 436.5(a), would require franchisors to disclose information about their predecessors, industry-specific regulations, and the general competition prospective franchisees are likely to face. Finally, proposed 436.5(t)(7) would require a franchisor to disclose the names and addresses of trademark-specific franchisee associations that ask to be listed in the franchisor's disclosure document. These associations can often provide prospects with additional information on the franchise system.

The proposed cover sheet changes would not constitute ''collections of information'' as that term is defined in the PRA, because the text is being provided by the Government and the PRA exempts any ''information that is originally supplied by the Federal government to the recipient for the purpose of disclosure to the public.'' 5 C.F.R. § 1320.3(c)(2). Requiring disclosure of predecessor information, regulations and competition, while not exempt, would only impose a *de minimis* burden, since presumably, franchisors would already possess this information. Likewise, disclosing information about trademark-specific franchisee associations would also impose only a *de minimis* burden on the affected entities, since franchisors would only be responsible for disclosing information about those associations that request to be included in the disclosure document. We estimate that only one hour per year per franchisor would be needed to comply with these disclosure requirements for a total increase of 2,375 hours and a cost of $593,750.

(7) Disclosing Additional Information About the Franchise Relationship

Proposed section 436.5(c), which requires franchisors to disclose pending lawsuits brought against franchisees, would give potential franchisees information about the types of problems in the franchise system, and the extent to which a franchisor uses litigation to resolve disputes. The Rule currently requires the disclosure of litigation brought by franchisees against franchisors and this has not proven to be overly burdensome. Disclosing additional lawsuits would also generally be *de minimis*, since this information is well-known by the franchisor, is usually already compiled during the ordinary course of business, and can easily be updated at the beginning and end of a lawsuit. Accordingly, we have assigned 1 hour to this task for a total of 2,375 hours and a cost of $593,750.

(8) Requiring Disclosure About Gag Clauses

Proposed section 436.5(t)(6) includes a new provision that requires franchisors to disclose their use of gag clauses. The proposed amendment requires that, if applicable, franchisors make a prescribed statement that informs prospective franchisees that sometimes, current or former franchisees sign provisions restricting their ability to discuss their franchise experience. The proposal also offers franchisors two additional options: (1) a franchisor may disclose the number and percentage of current and former franchisees who have signed agreements with gag clauses within the last three years; and (2) a franchisor may explain the circumstances surrounding the gag clauses. However, because this proposal's only actual requirement is to include specific text provided by the Commission, it is exempt from the PRA. Therefore, no additional burden hours are associated with this proposal.

(9) Requiring Prescribed Statements About Financial Performance Representations

Proposed sections 436.5(s)(1) and (2) require franchisors to include in their disclosure documents two prescribed statements that clarify the law regarding financial performance representations. The first statement is mandatory for all franchisors, and makes clear that financial performance representations are allowed under certain circumstances. This statement combats a common misrepresentation—that the FTC's Franchise Rule does not permit franchisors to make earnings representations. If franchisors do not provide financial representations, they must also include a second prescribed statement that includes an acknowledgment that they do not provide any type of financial performance representations, either oral or written. The proposed Rule provides the specific text that franchisors must use for both statements, and is therefore exempt from the PRA. Accordingly, no burden hours are associated with this proposed amendment.

(10) Recordkeeping Requirements

The proposed amended Rule would set forth two recordkeeping requirements. As an initial matter, proposed section 436.5(w) adds a requirement that franchisors include in their disclosure document a receipt that prospective franchisees must sign and return at least five days before a franchise agreement is signed or the franchisee pays any franchise fee. The proposal also requires franchisors to keep signed receipts for each completed franchise sale for at least three years. This proposed item contains the required language and format for the receipt, and the franchisor must only fill-in its franchise-specific information. Franchisors are also required to include a receipt under the current UFOC Guidelines. Thus, there is very little burden associated with producing the receipt.

Further, proposed section 436.5(w) would require franchisors to retain a copy of the signed receipts for at least three years. In addition, proposed section 436.7(g) would require franchisors who elect to furnish disclosures electronically to retain a specimen copy of each materially different version of their disclosure document for a period of three years. These recordkeeping provisions should impose a *de minimis* additional burden on franchisors. Many franchisors already retain sales receipt in order to comply with state regulations. In addition, we can assume that a large number of franchisors would retain receipts as well as copies of their disclosures in the ordinary course of business. Thus, the few franchisors who do not already retain these records in the ordinary course of business will experience an increased paperwork burden. We therefore estimate that franchisors, on average, will require 30 minutes per year to maintain these records for a total increase of 1,188 hours and $297,000.

Total cost to comply with the Franchise Rule = $12,165,750 ($19,925,000–$7,759,250)

Revised total annual burden hours = 19,363 (33,500–14,137)

Organizations and individuals desiring to submit comments on the information collection requirements should direct comments to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Federal Trade Commission.

The FTC considers comments by the public on these collections of information in:

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have a practical use;
- Evaluating the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of 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.
- OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives the comment within 30 days of publication. This does not affect the deadline for the public to comment to the agency on the proposed regulations.

Section H—Request for Comments

The Commission invites members of the public to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of the proposed Franchise Rule amendments. The Commission requests that factual data upon which the comments are based be submitted with the comments. In addition to the issues raised above, the Commission solicits public comment on the specific questions identified below. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

1. General Questions

Please provide comment, including relevant data, statistics, consumer complaint information, or any other evidence, on each different proposed change to the Rule. Regarding each proposed revision commented on, please include answers to the following questions:

(a) What is the impact (including any benefits and costs), if any, on:

1. Prospective franchisees;
2. Existing franchisees; and
3. Franchisors (including small franchisors and start-up franchisors)?

(b) What alternative proposals should the Commission consider? How would these proposed alternatives affect the costs and benefits of the proposed Rule?

2. Questions on Specific Proposed Changes

In response to each of the following questions, please provide: (1) detailed comment, including data, statistics, consumer complaint information, and other evidence, regarding the issues addressed in the question; (2) comment as to whether the proposed changes do or do not provide an adequate solution to the problems they were intended to address; and (3) suggestions for additional changes that might better maximize consumer protections or minimize the burden on franchisors.

Definitions

1. The proposed definition of ''financial performance representation''—section 436.1(d)—includes any representation that ''states or suggests'' a value or range of potential or actual financial performance. This definition seeks to make clear that implied earnings representations are considered financial performance representations. Does this definition clarify what the Commission considers to be financial performance representations? If not, what alternative definition should the Commission consider?

2. Based upon the UFOC model, the proposed Rule requires franchisors to

disclose various expenses, including the initial franchise fee (proposed 436.5(e)), recurring or occasional fees (proposed 436.5(f)), and estimated initial investment (proposed 436.5(g)). While the Commission does not consider the disclosure of such expense information alone to constitute the making of a financial performance claim, others arguably may interpret some expense information as implying a financial performance representation, such as a break-even point. To avoid any confusion, the proposed definition of ''financial performance representation''—section 436.l(d)—specifically omits expense information. Is the omission of expense information from the proposed definition sufficient to make clear that compliance with the Rule's expense disclosure obligations does not trigger the Rule's Item 19 financial performance substantiation requirements? At the same time, could the proposed definition inadvertently be interpreted as permitting franchisors to disclose additional, non-required expense data without complying with the Rule's Item 19 requirements? If so, could franchisors make ''back-door'' earnings representations in the guise of additional expense information? What alternative definition should the Commission consider?

3. The proposed definition of the term ''franchise''—section 436.1(g)—is designed to include franchises that traditionally have been covered by the Rule, while eliminating ordinary business opportunities that will be covered by a separate business opportunity rule. Does the proposed revised definition capture the appropriate universe of franchises? Does the definition inadvertently eliminate businesses that should be considered franchises?

4. The proposed definition of ''franchise seller''—section 436.1(h)—combines into a single concept the current terms ''franchisor'' and ''franchise broker.'' This alleviates the necessity for using both terms when discussing obligations to furnish documents. It also seeks to clarify who is considered to be a franchise seller. Does the proposed definition include the appropriate persons? Are there other persons that should be included in the definition?

5. Proposed section 436.1(k) provides a definition of the term ''gag clause,'' which refers to contractual provisions that prohibit or restrict franchisees' ability to discuss their own personal experiences within the franchise system. Does this proposed definition clearly identify the types of provisions that are considered gag clauses? Does the use of the term ''gag clause'' accurately describe these types of contractual provisions? Is there another term that would be preferable?

6. Proposed section 436.1(l) provides a broad definition of the term ''Internet,'' which refers to all computer-to-computer communications, including the World Wide Web, and communications between computers and television, telephone, facsimile, and similar communications devices. Given the rapidly evolving computer environment, does this definition allow enough room—or too much room—for new types of computer communication? Is the definition consistent with other agencies' definitions of Internet?

7. The proposed definition of officer—section 436.1(o)—includes ''a *de facto* officer,'' an individual with significant management responsibility whose title does not adequately reflect the nature of the position. This revised definition, based upon the UFOC Guidelines, clarifies that the actual functions a person performs within a company, whether or not the person possesses a title, will be considered when determining if the individual is subject to the disclosure provisions in proposed sections 436.3–436.5. Is the proposed definition sufficient to enable franchisors to determine who is deemed to be an officer for purposes of the Rule? What alternative definition might be appropriate?

8. The proposed definition of ''signature''—section 436.1(w)— refers to a person's affirmative steps to authenticate his or her identity. This includes both written and electronic signatures. In light of the growing use of electronic communications, is the expansion of the Rule to include electronic signatures desirable? Are there sufficient safeguards in place to discourage unlawful uses of electronic signatures?

Liability

9. The proposed Rule sets forth a new standard of liability. Proposed section 436.2(c) would hold franchisors liable for any failure to comply with the disclosure requirements and instructions set forth in sections 436.3–436.8. In contrast, proposed section 436.2(c) would hold other sellers (such as the franchisor's employees and sales representatives) liable for violations of sections 436.3–436.8 only if they ''knew or should have known of the violation.'' What are the costs and benefits of holding other franchise sellers liable for Rule violations? If other franchise sellers are to be held liable, is a ''knew or should have known'' standard appropriate? What alternative standards of liability should the Commission consider?

Timing Provisions

10. Proposed section 436.2(a)(1) would require franchisors to provide disclosure documents at least 14 days before a prospective franchisee either signs a binding agreement or pays a fee in connection with the franchise sale. This proposal would eliminate the current ''10 business day'' period in favor of a bright line ''14 days.'' Is this modification desirable? What alternatives should the Commission consider?

11. Proposed section 436.2(a)(2) would require the franchisor to provide a copy of its completed contract at least five days before the prospective franchisee signs the contract. This proposal would eliminate the current ''five business day'' period in favor of a bright line ''five days.'' Does this proposal afford prospective franchisees sufficient time to conduct a due diligence review of a franchise offering? If five days does not provide a sufficient review period, what would be an appropriate review period?

Disclosures

12. Proposed section 436.5 retains the current Rule requirement that franchisors disclose information concerning their predecessors. What are the costs and benefits of this disclosure requirement? In particular, is information about predecessors useful to prospective franchisees in deciding whether to purchase a franchise from the current franchisor? Further, the proposed Rule would require franchisors to disclose information about predecessors during the past 10 years. Is this information readily available to franchisors? Should the disclosure be limited to information about the franchisor's immediate predecessor?

13. Proposed section 436.5(c)(ii) would require franchisors to disclose all pending material civil actions involving the franchise relationship. Would these additional disclosures provide prospective franchisees with useful information? Would it be advisable to limit the scope of the disclosure, by providing, for example, that a franchisor would not have to make the disclosure unless it had sued a certain threshold percentage of its franchisees? If so, would a 5% threshold be appropriate? What other alternatives should the Commission consider?

14. Proposed section 436.5(k) requires franchisors to disclose information about whether they require their franchisees to purchase or use electronic

cash registers and computer systems. Franchisors must also disclose detailed information about any required systems. Does this proposal sufficiently specify what information is required to be disclosed? Does this proposal unduly burden franchisors, in particular start-up franchisors, who may not possess specific computer requirements at the time the disclosure document is prepared? What alternatives should the Commission consider?

15. Proposed section 436.5(1)(2)(ii) would require franchisors that do not offer exclusive territories to make the statement: ''You will not receive an exclusive territory. [Franchisor] may establish other franchised or franchisor-owned outlets that may compete with your location.'' Does this statement sufficiently alert prospective franchisees about potential competition from within the franchise system? What alternative statement would be appropriate?

16. Proposed section 436.5(1) requires franchisors to disclose whether they offer protected territories. Should proposed section 436.5(l) also require franchisors to disclose their current development plans? Is such information proprietary? What costs and benefits would be involved in disclosing current development plans?

17. Proposed section 436.5(q), among other things, requires franchisors to disclose information about ''renewals.'' Is the term ''renewal'' misleading? Does it imply that prospective franchisees will be able to extend their contracts for an additional period under the same terms and conditions as their current contract? Is there a distinction between an ''extension'' and a ''renewal'' of a contract? If the term ''renewal'' is misleading, what alternatives would be more accurate?

18. Proposed section 436.5(s), consistent with the UFOC Guidelines, would eliminate the requirement that financial performance representations must be geographically relevant to the franchise being offered. Would this proposal have an impact on the number of franchisors making financial performance representations or on the quality of such representations?

19. Proposed sections 436.5(s)(3)(i)-(ii) detail the information franchisors must provide if they elect to make historical performance representations. Do these required disclosures provide prospective franchisees with sufficient information to assess the representation? How can these disclosures be improved?

20. Proposed sections 436.5(s)(3)(ii)(A) and (F) require franchisors that make financial performance representations to: (1) describe the characteristics of the outlets underlying the representation; and (2) describe how those characteristics may differ materially from those of the outlet that may be offered to a prospective franchisee. Do these sections provide franchisors with sufficient guidance about what characteristics they must disclose? How can these sections be improved? Are these characteristics sufficient to enable prospective franchisees to assess the relevance of the financial performance representation to the franchise offering being considered? If not, what additional disclosures are desirable to provide prospective franchisees with the necessary information?

21. Proposed section 436.5(s)(3)(iv) retains the current requirement that franchisors making financial performance representations to prospective franchisees must include a conspicuous admonition that a new franchisee's individual financial results may differ from the results stated in the financial performance representation. Should this admonitions be required for all financial performance representations? If not, when is it unnecessary?

22. Commenters have noted that Item 20 may cause franchisors to ''double count'' franchise closures. How often and under what circumstances does this occur? Does the proposed section 436.5(t) approach solve the double counting problem? Do the instructions and sample tables provide sufficient guidance on how to present the required information?

23. If multiple events occur in the process of a change in the ownership or closure of a unit, proposed section 436.5(t)(1) directs franchisors to report that change under the heading for the event that occurred first (a ''first-in-time'' approach). For example, if a franchisor formally notifies a franchisee that the franchise agreement for a particular unit will be terminated, and the franchisee subsequently sells his rights back to the franchisor or to a third-party, the franchisor would record this series of events as a ''termination,'' since that event occurred first. In many instances, this approach would capture terminations by the franchisor rather than any subsequent transfers or reacquisitions. Does this approach capture the right information? Is there any evidence that suggests that information about terminations by a franchisor is more meaningful to prospective franchisees than subsequent transfers or reacquisitions?

24. Instead of a first-in-time approach, should the Commission consider prioritizing the various events that may occur, so that franchisors would report unit closures and ownership changes that involve multiple events according to the highest assigned applicable category (an ''order-of-priority'' approach)?

A. Should the Commission adopt the order of priority set forth in columns (4) through (8) of the proposed Item 20 table? Like the first-in-time approach, this approach would tend to stress terminations and cancellations over reacquisitions and transfers. Under this approach, a franchisor would report events according to the following order: (1) termination or cancellation by the franchisor; (2) reacquisition by the franchisor for consideration (whether by payment or forgiveness or assumption of debt); (3) transfer by the franchisee to a new owner; (4) post-term non-renewals; and (5) events other than termination/cancellation, reacquisition, transfer, or post-term non-renewal.

B. Should the order of priority focus on reacquisitions and transfers over terminations and cancellations? Under this approach, a franchisor would report events according to the following order: (1) reacquisitions by the franchisor for consideration (whether by payment or forgiveness or assumption of debt); (2) transfer by the franchisee to a new owner; (3) termination or cancellation by the franchisor; (4) post-term non-renewal; and (5) events other than reacquisition, transfer, termination/cancellation, or post-term non-renewal.

C. Are either of these approaches preferable to the first-in-time approach? Should the Commission consider other orders of priority? How might the application of a specific order of priority lead to different results than the first-in-time approach? What kinds of information would a specific order-of-priority approach tend to provide that is not available from the first-in-time approach? What evidence is there that prospective franchisees would find this additional information valuable to them?

25. Consistent with the UFOC guidelines, proposed section 436.5(t)(4) requires that franchisors disclose the names, addresses, and telephone numbers of either all of their franchisees or at least 100 of their franchisees. The current Rule requires that franchisors disclose the names, addresses, and telephone numbers of only 10 franchisees. What are the costs and benefits of disclosing the names, addresses, and telephone numbers of additional franchisees?

26. Proposed Item 20—section 436.5(t)(6)—also includes a new provision that requires disclosure of information about the use of gag clauses.

Would this proposal provide prospective franchisees with useful information? Will this proposal affect the ability of franchisors and franchisees to reach future settlements? Is the three-year reporting period appropriate? If not, should it be longer or shorter?

27. Proposed Item 20—section 436.5(t)(7)—also would require franchisors to disclose information about trademark-specific franchisee associations. Would this provision provide prospective franchisees with useful information? Does the proposal strike the correct balance between costs imposed on franchisors and the benefits to prospective franchisees?

28. Proposed section 436(u)(2) sets forth the phase-in of audited financial statements for new franchisors. Do the instructions and table provide sufficient guidance on how to phase-in audited financial statements? Should the Commission consider alternative phase-in approaches?

29. Proposed section 436.5(w)(2) would require franchisors to prove that prospective franchisees actually received a disclosure document. Does this proposal serve a useful purpose? Do franchisors already retain similar records in the ordinary course of business? What alternative methods should the Commission consider?

30. The proposed Rule disclosures are based upon the UFOC Guidelines. As explained in this notice, however, there are several instances where the Commission intends the proposed Rule to differ from the UFOC Guidelines. Aside from those instances already noted, are there other instances where a proposed Rule provision appears to be inconsistent with the comparable UFOC provision in a material way?

Electronic Disclosures

31. Proposed section 436.7(b) would permit franchisors to furnish disclosure documents electronically, and sets forth the conditions under which franchisors may do so. What approaches are other federal and state agencies taking regarding electronic disclosure? Is the Commission's proposal consistent with other federal and state agencies' approaches? Are there other approaches the Commission should consider?

32. Proposed section 436.7(b) would require franchisors who furnish disclosures electronically to provide prospective franchisees with a written summary document. One purpose of the summary document is to help ensure that prospective franchisees understand the importance of receiving a disclosure document and their rights if they cannot read an electronic version. Will this provision achieve that goal? Will the summary document add significantly to the costs associated in providing electronic disclosure documents?

Exemptions

33. Proposed section 436.9 provides that certain franchise relationships are exempt from the Rule's disclosure requirements. Does this provision adequately inform franchisors that they nonetheless are subject to the applicable Rule prohibitions set forth at 436.10 (*i.e.*, failure to return refunds)?

34. Assuming business opportunities will be addressed in a separate rule, does proposed section 436.9(a), which retains the current $500 threshold for franchise sales, continue to serve a useful purpose? What threshold would ensure that the Franchise Rule continues to apply to transactions involving a ''personally significant monetary investment?''

35. Proposed section 436.9(e)(1) would create a disclosure exemption for large investments. Is the proposed $1.5 million threshold appropriate? What alternative threshold would be preferable? Are the other protections included in this proposed exemption sufficient to limit it to only sophisticated investors? Specifically, is it appropriate to exclude funds received from the franchisor or affiliate towards the $1.5 million? Does the required franchisee acknowledgment add any additional protection to prospective franchisees?

36. Proposed section 436.9(e)(2) also creates a disclosure exemption for large corporate investors. Do the proposed five years in business and $5 million net worth requirements accurately characterize the type of corporate investors that should be excluded from Rule coverage? Should the limits be raised or lowered? What other alternatives should the Commission consider in determining the proper class of exempted corporate-investors?

37. Does proposed section 436.9(e) adequately address the impact of inflation on the proposed sophisticated investor thresholds? Are there more effective ways of adjusting for inflation? Does the inherent uncertainty in an inflation adjustment present problems to franchisors or prospective franchisees? If the Commission publishes its inflation-adjusted thresholds several months before their effective dates, would that provide sufficient notice to franchisors or prospective franchisees?

Miscellaneous

38. Proposed section 436.10(e) would prohibit franchisors from disclaiming (or requiring a franchisee from waiving reliance on) any statement made in a disclosure document. Would this proposal serve a useful purpose? What are the potential costs and benefits associated with the proposal? What alternatives should the Commission consider to ensure that prospective franchisees can rely on the accuracy of statements made in a disclosure document?

39. Proposed section 436.11(b) states that franchisors can petition the Commission to amend any outstanding FTC order that applies to any franchisor that may be inconsistent with any provision of the revised Rule. Is this express reference to the opportunity for order modification by the Commission needed?

40. Should the Commission revise the Franchise Rule to add a requirement that franchisors state in their disclosure documents the name, business address, and telephone number of the primary individuals who were responsible for preparing the disclosure document? This proposal would be similar to franchisors including information about the accounting firm that prepared their audited financial statements. Would such a requirement improve the quality of advice that prospective franchisors are given by their advisors? Could this requirement help reduce fraud in the sale of franchises, by giving advisors an incentive to be more cautious about advising clients who may be ill-prepared financially or otherwise to enter into franchising or to support a franchise system?

Section I—Proposed Rule

List of Subjects in 16 CFR Part 436

Advertising, Business and industry, Franchising, Trade practices.

Accordingly, it is proposed that part 436 of title 16 of the Code of Federal Regulations, be revised to read as follows:

PART 436—DISCLOSURE REQUIREMENTS AND PROHIBITIONS CONCERNING FRANCHISING

Subpart A—Definitions

Sec.
436.1 Definitions.

Subpart B—Obligations of Franchisors and Other Franchise Sellers

436.2 The obligation to furnish documents.

Subpart C—The Contents of a Disclosure Document

436.3 Cover page.
436.4 Table of contents.
436.5 Disclosure items.

Subpart D—Instructions

436.6 Instructions for preparing disclosure documents.
436.7 Instructions for electronic disclosure documents.
436.8 Instructions for updating disclosures.

Subpart E—Other Provisions

436.9 Exemptions.
436.10 Additional prohibitions.
436.11 Other laws, rules, orders.
436.12 Severability.

Appendix A: Sample Item 10 Table—Summary of Financing Offered

Appendix B: Sample Item 20(1) Table—Franchised Outlet Summary for Fiscal Years 1995–1997

Appendix C: Sample Item 20(2) Table—Franchisor—Owned Outlets Summary for 1995–1997

Appendix D: Sample Item 20(3) Table—Projected Openings as of December 31, 1997

Authority: 15 U.S.C. 41–58.

Definitions

§ 436.1 Definitions.

Unless stated otherwise, the following definitions shall apply throughout this rule:

(a) *Action* includes complaints, cross claims, counterclaims, and third-party complaints in a judicial proceeding, and their equivalents in an administrative action or arbitration proceeding.

(b) *Affiliate* means an entity controlled by, controlling, or under common control with the franchisor.

(c) *Disclose* means to state all material facts accurately, clearly, concisely, and legibly in plain English.

(d) *Financial performance representation* means any oral, written, or visual representation to a prospective franchisee, including a representation disseminated in the general media and Internet, that states or suggests a specific level or range of potential or actual sales, income, gross profits, or net profits. A chart, table, or mathematical calculation that demonstrates possible results based upon a combination of variables is a financial performance representation.

(e) *Fiscal year* refers to the franchisor's fiscal year.

(f) *Fractional franchise* means a franchise relationship, which when the relationship is created:

(1) The franchisee or any of the franchisee's current directors or officers has more than two years of experience in the same type of business; and

(2) The parties reasonably anticipate that the sales arising from the relationship will not exceed more than 20 percent of the franchisee's total dollar volume in sales during the first year of operation.

(g) *Franchise* means any continuing commercial relationship or arrangement, whatever it may be called, in which the terms of the offer or contract specify, or the franchise seller represents, orally or in writing, that:

(1) The franchisee obtains the right to operate a business or offer, sell, or distribute goods, commodities, or services that are identified or associated with the franchisor's trademark;

(2) The franchisor:

(i) Exerts or has authority to exert a significant degree of continuing control over the franchisee's method of operation, including but not limited to, the franchisee's business organization, promotional activities, management, or marketing plan; or

(ii) Provides significant assistance in the franchisee's method of operation (*e.g.*, the franchisee's business organization, promotional activities, management, or marketing plan), extending beyond the start of the business operation. Promotional assistance alone, however, will not constitute ''significant'' assistance in the absence of other forms of assistance; and

(3) As a condition of obtaining or commencing operation of the business, the franchisee is required by contract or by practical necessity to make a payment, or a commitment to pay, to the franchisor or a person affiliated with the franchisor.

(h) *Franchise seller* means a person that offers for sale, sells, or arranges for the sale of an interest in a franchise. It includes the franchisor and its employees, representatives, agents, and third-party brokers. It does not include franchisees who sell only their own outlets.

(i) *Franchisee* means any person who is granted an interest in a franchise.

(j) *Franchisor* means any person who grants an interest in a franchise and participates in the franchise relationship.

(k) *Gag clause* means any contractual provision entered into by a franchisor and a current or former franchisee that prohibits or restricts that franchisee from discussing his or her personal experience as a franchisee within the franchisor's system. It does not include confidentiality agreements that protect franchisors' trademarks or other proprietary information.

(l) *Internet* means all communications between computers and between computers and television, telephone, facsimile, and similar communications devices. It includes the World Wide Web, proprietary online services, E-mail, newsgroups, and electronic bulletin boards.

(m) *Leased department* means an arrangement whereby a retailer licenses or otherwise permits an independent seller to conduct business from the retailer's premises.

(n) *Material, material fact,* and *material change* includes any fact, circumstance, or set of conditions that has a substantial likelihood of influencing a reasonable franchisee or prospective franchisee in making a significant decision.

(o) *Officer* means any individual with significant management responsibility for the marketing and/or servicing of franchises, such as the chief executive and chief operating officers, and the financial, franchise marketing, training, and service officers. It also includes a *de facto* officer, namely an individual with significant management responsibility for the marketing and/or servicing of franchises whose title does not reflect the nature of the position.

(p) *Person* means any individual, group, association, limited or general partnership, corporation, or any other business entity.

(q) *Plain English* means the organization of information and language usage understandable by a person unfamiliar with the franchise business. It incorporates the following six principles of clear writing: Short sentences; definite, concrete, everyday language; active voice; tabular presentation of information; no legal jargon or highly technical business terms; and no multiple negatives.

(r) *Predecessor* means a person from whom the franchisor acquired, directly or indirectly, the major portion of the franchisor's assets or from whom the franchisor obtained a license to use the trademark or trade secrets in the franchise operation.

(s) *Principal business address* means the address of the franchisor's home office in the United States. A principal business address cannot be a post office box or private mail drop.

(t) *Prospective franchisee* means any person (including any agent, representative, or employee) who approaches or is approached by a franchise seller to discuss the possible establishment of a franchise relationship.

(u) *Required payment* means all consideration that the franchisee must pay to the franchisor or its affiliate, either by contract or by practical necessity, as a condition of obtaining or commencing operation of the franchise.

(v) *Sale of a franchise* includes an agreement whereby a person obtains a franchise or interest in a franchise for value by purchase, license, or otherwise. It does not include extending or

renewing an existing franchise agreement where there is no interruption in the franchisee's operation of the business, unless the new agreement contains terms and conditions that differ materially from the original agreement.

(w) *Signature* means a person's affirmative steps to authenticate his or her identity. It includes a person's written signature, as well as a person's use of security codes, passwords, digital signatures, and similar devices.

(x) *Trademark* includes trademarks, service marks, names, logos, and other commercial symbols.

(y) *Written* means any information in printed form or in any form capable of being preserved in tangible form and read. It includes: type-set, word processed, or handwritten documents; documents on computer disk or CD-Rom; documents sent via E-mail; or documents posted on the Internet. It does not include mere oral statements.

Obligations of Franchisors and Other Franchise Sellers

§ 436.2 The obligation to furnish documents.

In connection with the offer or sale of a franchise to be located in the United States of America, its territories, or possessions, unless the transaction is exempted under the provisions of section 436.9, it is an unfair or deceptive act or practice in violation of section 5 of the Federal Trade Commission Act:

(a) For any franchise seller to fail to furnish a prospective franchisee with the following documents within the following time frames. The obligations set forth in this subsection are satisfied if either the franchisor or other franchise seller furnishes the required documents to the prospective franchisee:

(1) A current disclosure document. A copy of the franchisor's current disclosure document, as described in sections 436.3–436.8, at least 14 days before the prospective franchisee signs a binding agreement or pays any fee in connection with the proposed franchise sale; and

(2) Completed franchise agreement. A copy of the completed franchise agreement, and any related agreements, at least five days before the prospective franchisee signs the franchise agreement.

(b) For purposes of this section, a franchise seller will be considered to have furnished the documents by the required date if a copy of the document—either a paper copy or, with the consent of the prospective franchisee, an electronic copy—has been delivered to the prospective franchisee by that date, or if a copy has been sent to the address specified by the prospective franchisee by first-class mail at least three days prior to the specified date. Documents shall also be considered to have been furnished by the required date if a copy has been sent by electronic mail or if directions for accessing the document on the Internet have been provided to the prospective franchise by that date.

(c) For any franchisor to fail to include the information and follow the instructions required by sections 436.3–436.8 in preparing the disclosure document to be furnished to prospective franchisees. Any other franchise seller shall be liable for violations of these sections if they knew or should have known of the violation.

The Contents of a Disclosure Document

§ 436.3 Cover page.

Begin the disclosure document with a cover page that consists of the following:

(a) The title "**FRANCHISE DISCLOSURE DOCUMENT**" in boldface type.

(b) The franchisor's name, type of business organization, principal business address, telephone number, and, if applicable, E-mail address and primary Internet home page address.

(c) A sample of the primary business trademark under which the franchisee will conduct its business.

(d) A brief description of the franchised business.

(e) The total amounts in Item 5 (Initial Franchisee Fee) and Item 7 (Estimated Initial Investment) of the disclosure document.

(f) The issuance date.

(g) The following statements in the order and form shown below:

(1) This disclosure document summarizes certain provisions of the franchise agreement and other information in plain English. Read this disclosure document and all agreements carefully. You must receive this disclosure document at least 14 days before you sign a binding agreement or pay any fee. You must also receive completed copies of all contracts at least five days before you sign them.

(2) If the franchisor furnishes an electronic version of its disclosure document, also insert the following:

You may have elected to receive an electronic version of your disclosure document. If so, you may wish to print or download the disclosure document for future reference. You have the right to receive a paper copy of the disclosure document up until the time of sale. To obtain a paper copy, contact [name] at [address] and [telephone number].

(3) Buying a franchise is a complicated investment. The information contained in this disclosure document can help you make up your mind. Note, however, that the Federal Trade Commission (FTC) has not checked the information and does not know if it is correct. Information comparing franchisors is available. Call your State agency or your public library for sources of information. Additional information on franchising, such as "A Consumer's Guide to Buying a Franchise," is available from the FTC. You can contact the FTC in Washington, D.C., or visit the FTC's home page at <www.ftc.gov> for further information. In addition, there may be laws on franchising in your State. Ask your State agencies about them.

(4) You should also know that the terms and conditions of your contract will govern your franchise relationship. While the disclosure document includes some information about your contract, don't rely on it alone to understand your contract. Read all of your contract carefully. Show your contract and this disclosure document to an advisor, like a lawyer or an accountant.

(5) Federal Trade Commission, Washington, DC 20580.

(h) Franchisors may include additional disclosures on the cover page, or on a separate cover page, to comply with any applicable State pre-sale disclosure laws.

§ 436.4 Table of contents.

Include the following table of contents. State the page where each disclosure Item begins. List all exhibits by letter, following the example shown below.

Table of Contents

1. The Franchisor, its Parent, Predecessors, and Affiliates
2. Business Experience
3. Litigation
4. Bankruptcy
5. Initial Franchise Fee
6. Other Fees
7. Estimated Initial Investment
8. Restrictions on Sources of Products and Services
9. Franchisee's Obligations
10. Financing
11. Franchisor's Assistance, Advertising, Computer Systems, and Training
12. Territory
13. Trademarks
14. Patents, Copyrights, and Proprietary Information
15. Obligation to Participate in the Actual Operation of the Franchise Business
16. Restrictions on What the Franchisee May Sell

17. Renewal, Termination, Transfer, and Dispute Resolution
18. Public Figures
19. Financial Performance Representations
20. Outlets and Franchisee Information
21. Financial Statements
22. Contracts
23. Receipt

Exhibits

A. Franchise Agreement

§ 436.5 Disclosure items.

(a) Item 1: The Franchisor, Its Parents, Predecessors, and Affiliates.

(1) Disclose the name of the franchisor. Also disclose the names of any parent and affiliates of the franchisor and the relationship with the franchisor. For purposes of this paragraph (a) the term ''affiliate'' means an entity controlled by, controlling, or under common control with the franchisor, that offers franchises in any line of business or is providing products or services to the franchisees of the franchisor.

(2) Disclose the name of any predecessors during the 10-year period immediately before the close of the franchisor's most recent fiscal year.

(3) Disclose the name under which the franchisor does or intends to do business.

(4) Disclose the principal business address of the franchisor, its parent, predecessors, and affiliates, and the franchisor's agent for service of process.

(5) Disclose the type of business organization used by the franchisor (e.g., corporation, partnership), and the State in which it was organized.

(6) Disclose the following information about the nature of the franchisor's business and the franchises to be offered:

(i) Whether the franchisor operates businesses of the type being franchised;

(ii) The franchisor's other business activities;

(iii) The business to be conducted by the franchisee;

(iv) The general market for the product or service to be offered by the franchisee. In describing the general market, consider factors such as whether the market is developed or developing, whether the goods will be sold primarily to a certain group, and whether sales are seasonal;

(v) In general terms, any laws or regulations specific to the industry in which the franchise business operates; [1] and

(vi) A general description of the competition.

(7) Disclose the prior business experience of the franchisor, its parent, predecessors, and affiliates, including:

(i) The length of time each has conducted the type of business to be operated by the franchisee;

(ii) The length of time each has offered franchises providing the type of business to be operated by the franchisee; and

(iii) Whether each has offered franchises in other lines of business, including:

(A) A description of each other line of business;

(B) The number of franchises sold in each other line of business; and

(C) The length of time offering each other line of business.

(b) Item 2: Business Experience. Disclose the position and name of the directors, trustees, general partners, officers, and subfranchisors of the franchisor or any parent who will have management responsibility relating to the offered franchises. List all franchise brokers. For each person listed, state the principal positions and employers during the past five years, including each position's beginning date, ending date, and location.

(c) Item 3: Litigation.

(1) Disclose whether the franchisor, its parent, predecessor, a person identified in paragraph (b) of this section, or an affiliate who offers franchises under the franchisor's principal trademark:

(i) Has pending against that person:

(A) An administrative, criminal, or material civil action alleging a violation of a franchise, antitrust, or securities law, or alleging fraud, unfair or deceptive practices, or comparable allegations; or

(B) Civil actions, other than ordinary routine litigation incidental to the business, which are significant in the context of the number of franchisees and the size, nature, or financial condition of the franchise system or its business operations.

(ii) Is a party to any pending material civil action involving the franchise relationship. For purposes of this paragraph, ''franchise relationship'' means contractual obligations between the franchisor and franchisee directly relating to the operation of the franchised business (*e.g.*, royalty payment and training obligations). It does not include suits involving third-parties such as suppliers or indemnification for tort liability.

(iii) Has during the 10-year period immediately before the disclosure document's issuance date:

(A) Been convicted of a felony or pleaded nolo contendere to a felony charge;

(B) Been held liable in a civil action by final judgment. ''Held liable'' means that, as a result of claims or counterclaims, the franchisor must pay money or other consideration, must reduce an indebtedness by the amount of an award, cannot enforce its rights, or must take action adverse to its interests; or

(C) Been a defendant in a material action involving an alleged violation of a franchise, antitrust, or securities law, or involving allegations of fraud, unfair or deceptive practices, or comparable allegations.[2]

(iv) Is subject to a currently effective injunctive or restrictive order or decree resulting from a pending or concluded action brought by a public agency and relating to the franchise or to a Federal, State, or Canadian franchise, securities, antitrust, trade regulation, or trade practice law.

(2) For each action identified in paragraph (c)(1) of this section, state the title, case number or citation, the initial filing date, the names of the parties, and the forum. State the relationship of the opposing party to the franchisor (*e.g.*, competitor, supplier, lessor, franchisee, former franchisee, or class of franchisees). Summarize the legal and factual nature of each claim in the action, the relief sought or obtained, and any conclusions of law or fact.[3] In addition:

(i) For pending actions, state the status of the action;

(ii) For prior actions, state the date when the judgment was entered and any damages and/or settlement terms; [4]

[1] Only laws pertaining specifically to the industry sector of the franchised business, and not businesses generally, must be disclosed in this Item. For example, a real estate brokerage franchisor should disclose the existence of broker licensing laws; an optical products franchisor should disclose the existence of applicable optometrist/optician staffing regulations and licensing requirements; a lawn care franchisor should disclose that certain environmental laws regulating pesticide application to residential lawns will require that franchisees post notices on treated lawns. It is not necessary to include laws or regulations that apply to businesses generally, such as general business licensing laws, tax regulations, or labor laws.

[2] Franchisors are not required to disclose actions that were dismissed by final judgment without liability or entry of an adverse order. However, franchisors must disclose dismissal of a material action in connection with a settlement.

[3] Franchisors may include a summary opinion of counsel concerning any action if a consent to use the summary opinion is included as part of the disclosure document.

[4] If a settlement agreement must be disclosed in this Item, all material settlement terms must be disclosed, whether or not the agreement is confidential. Because of difficulties in retrieving information and/or obtaining releases from older confidentiality agreements, franchisors are not required to disclose the settlement terms of settlements entered before April 15, 1993, consistent with the policy adopted by the North

(iii) For injunctive or restrictive orders, state the nature, terms, and conditions of the order or decree; and

(iv) For convictions or pleas, state the crime or violation, the date of conviction, and the sentence or penalty imposed.

(d) Item 4: Bankruptcy.

(1) Disclose whether the franchisor, its parent, predecessor, a person identified in paragraph (b) of this section or an affiliate who offers franchises under the franchisor's principal trademark has, during the 10-year period immediately before the date of this disclosure document:

(i) Filed as debtor (or had filed against it) a petition under the U.S. Bankruptcy Code (''Bankruptcy Code'');

(ii) Obtained a discharge of its debts under the Bankruptcy Code; or

(iii) Been a principal officer of a company or a general partner in a partnership that either filed as a debtor (or had filed against it) a petition under the Bankruptcy Code or that obtained a discharge of its debts under the Bankruptcy Code while or within one year after the officer or general partner held the position in the company.

(2) For each bankruptcy:

(i) State the name, address, and principal business of the debtor;

(ii) If the debtor is not the franchisor, state the relationship of the debtor to the franchisor (*e.g.*, affiliate, officer); and

(iii) State the date of the original filing. Identify the bankruptcy court, and the case name and number. If applicable, state the debtor's discharge date, including discharges under Chapter 7 and confirmation of any plans of reorganization under Chapters 11 and 13 of the Bankruptcy Code.

(3) Disclose cases, actions, and other proceedings under the laws of foreign nations relating to bankruptcy, as if they took place under the Bankruptcy Code.

(e) Item 5: Initial Franchise Fee. Disclose the initial franchise fee and the conditions under which this fee is refundable. If the initial fee is not uniform, disclose the range or the formula used to calculate the initial fees paid in the fiscal year before the issuance date and the factors that determined the amount. For purposes of this Item, ''initial fee'' means all fees and payments for services or goods received from the franchisor before the franchisee's business opens, whether payable in lump sum or installments.

(f) Item 6: Recurring or Occasional Fees. Disclose, in the tabular form shown below, any recurring or occasional fees that the franchisee must pay to the franchisor or its affiliates, or that the franchisor or its affiliates impose or collect in whole or in part on behalf of a third party. Include any formula used to compute the fees.[5]

(1) Type of fee	(2) Amount	(3) Due date	(4) Remarks

(1) In column (1), disclose the type of fee (*e.g.*, royalties, and fees for lease negotiations, construction, remodeling, additional training or assistance, advertising, advertising cooperatives, purchasing cooperatives, audits, accounting, inventory, transfers, and renewals).

(2) In column (2), disclose the amount of each fee.

(3) In column (3), disclose the applicable due date for recurring fees.

(4) In column (4), include any relevant remarks, definitions, or caveats that elaborate on the information in the table. If remarks are lengthy, franchisors may use footnotes instead of the remarks column. If applicable, include the following information in the remarks column or in a footnote:

(i) If the fees are payable only to the franchisor;

(ii) If the fees are imposed and collected by the franchisor;

(iii) The terms and conditions under which any fee is refundable; and

(iv) The voting power of franchisor-owned outlets on any fees imposed by cooperatives. If franchisor-owned outlets have controlling voting power, disclose the maximum and minimum fees that may be imposed.

(g) Item 7: Estimated Initial Investment. Disclose, in the tabular form shown below, the franchisee's estimated initial investment. Title the table ''Your Estimated Initial Investment For The First [reasonable initial phase] Months.'' A reasonable initial phase is at least three months or a reasonable period for the industry. Franchisors may include additional expenditure tables to show expenditure variations caused by differences such as in site location and premises size.

YOUR ESTIMATED INITIAL INVESTMENT FOR THE FIRST [REASONABLE INITIAL PHASE] MONTHS

(1) Type of expenditure	(2) Amount	(3) Method of payment	(4) When due	(5) To whom paid
Total.				

(1) In column (1), disclose each type of expense, beginning with pre-opening expenses. Include the following expenses, if applicable. Use footnotes to comment on expenditures.

(i) The initial franchise fee.

(ii) Training expenses.

(iii) Real property, whether purchased or leased.

(iv) Equipment, fixtures, other fixed assets, construction, remodeling, leasehold improvements, and decorating costs, whether purchased or leased.

(v) Inventory required to begin operation.

(vi) Security deposits, utility deposits, business licenses, and other prepaid expenses.

(vii) List separately and by name any other specific payment (*e.g.*, additional training, travel, or advertising expenses).

(viii) Include an additional expense category named ''other payments'' for any other miscellaneous expenses that the franchisee will incur before operations begin and during the initial phase.

(2) In column (2), state the amount of the payment. If the specific amount is not ascertainable, use a low-high range based on the franchisor's current experience. If real property costs cannot be estimated in a low-high range, disclose the approximate size of the property and building, and describe the probable location of the building (*e.g.*, strip shopping center, mall, downtown, rural, or highway).

(3) In column (3), disclose the method of payment.

(4) In column (4), disclose the applicable due date.

(5) In column (5), disclose to whom payment will be made.

(6) Total the initial investment, incorporating ranges of fees, if used.

(7) Disclose in a footnote:

(i) The conditions under which each payment is refundable; and

(ii) If the franchisor or an affiliate finances part of the initial investment, the amount that it will finance, the required down payment, the annual percentage rate of interest, rate factors, and the estimated loan repayments. Franchisors may refer the reader to Item 10 for additional details.

American Securities Administrators Association's Uniform Franchise Offering Circular Guidelines.

[5] If fees may increase, disclose the formula that determines the increase or the maximum amount of the increase. For example, a percentage of gross sales is acceptable if the franchisor defines the term ''gross sales.''

(h) Item 8: Restrictions on Sources of Products and Services. Disclose franchisees' obligations to purchase or lease goods, services, fixtures, equipment, real estate, or comparable items related to establishing or operating the franchised business either from the franchisor, its designee, or suppliers approved by the franchisor, or under the franchisor's specifications. Include obligations to purchase imposed by written agreement or by the franchisor's practice.[6] For each applicable obligation:

(1) Disclose the item required to be purchased or leased.

(2) Disclose whether the franchisor or its affiliates are either approved suppliers or the only approved suppliers of that item.

(3) Disclose how the franchisor grants and revokes approval of alternative suppliers. State:

(i) The criteria for evaluating, approving, or disapproving of alternative suppliers;

(ii) Whether the franchisor permits franchisees to contract with alternative suppliers who meet the franchisor's criteria;

(iii) Any fees and procedures to secure approval;

(iv) How approvals are revoked; and

(v) The time period within which the franchisee will receive notification of approval or disapproval.

(4) Disclose whether the franchisor issues specifications and standards to franchisees, subfranchisees, or approved suppliers. Describe how the franchisor issues and modifies specifications.

(5) Disclose whether the franchisor or its affiliates will or may derive revenue or other material consideration as a result of required purchases or leases by franchisees.[7] Describe the precise basis by which the franchisor or its affiliates will or may derive such consideration by disclosing:

(i) The franchisor's total revenue;

(ii) The franchisor's revenues from all required purchases and leases of products and services;

(iii) The percentage of the franchisor's total revenues represented by the franchisor's revenues from required purchases or leases; and

(iv) If the franchisor's affiliates also sell or lease products or services to franchisees, disclose affiliate revenues from those sales or leases.

(6) Disclose the estimated proportion of these required purchases and leases to all purchases and leases by the franchisee in establishing and operating the franchised business.

(7) If a designated supplier will make payments to the franchisor as a result of purchases by franchisees, disclose the basis for the payment (*e.g.*, specify a percentage or a flat amount). For purposes of this paragraph, a ''payment'' includes the sale of similar goods or services to the franchisor at a lower price than that available to franchisees.

(8) Disclose the existence of purchasing or distribution cooperatives.

(9) Disclose whether the franchisor negotiates purchase arrangements with suppliers, including price terms, for the benefit of franchisees.

(10) Disclose whether the franchisor provides material benefits (*e.g.*, renewal or granting additional franchises) to a franchisee based on a franchisee's purchase of particular products or services or use of particular suppliers.

(i) Item 9: Franchisee's Obligations. Disclose, in the tabular form shown below, a list of the franchisees' principal obligations. Cross-reference each listed obligation with any applicable franchise agreement and disclosure document section(s). Respond to each listed obligation. If a particular obligation is not applicable, state ''Not Applicable.'' Include additional obligations, as is warranted.

This table lists your principal obligations under the franchise and other agreements. It will help you find more detailed information about your obligations in these agreements and in other items of this disclosure document.

Obligation	Section in agreement	Disclosure document item
a. Site selection and acquisition/lease		
b. Pre-opening purchases/leases		
c. Site development and other pre-opening requirements		
d. Initial and ongoing training		
e. Opening		
f. Fees		
g. Compliance with standards and policies/operating manual		
h. Trademarks and proprietary information		
i. Restrictions on products/ services offered		
j. Warranty and customer service requirements		
k. Territorial development and sales quotas		
l. Ongoing product/service purchases		
m. Maintenance, appearance, and remodeling requirements		
n. Insurance		
o. Advertising		
p. Indemnification		
q. Owner's participation/management/staffing		
r. Records and reports		
s. Inspections and audits		
t. Transfer		
u. Renewal		
v. Post-termination obligations		
w. Non-competition covenants		
x. Dispute resolution		
y. Other (describe)		

[6] Franchisors may include the reason for the requirement. Franchisors are not required to disclose in this Item the purchase or lease of goods or services provided as part of the franchise without a separate charge (*e.g.*, initial training, the cost for which is included in the franchise fee); such fees should be described in paragraph (e) of this section. Franchisors should not disclose fees already described in paragraph (e) of this section.

[7] Figures should be taken from the franchisor's most recent annual audited financial statement required in paragraph (u) of this section. If audited statements are not yet required, or if the entity deriving the income is an affiliate, disclose the sources of information used in computing revenues.

(j) Item 10: Financing.

(1) Disclose the terms and conditions of each financing arrangement,[8] including leases and installment contracts, that the franchisor, its agent, or affiliates offers directly or indirectly to the franchisee.[9] The franchisor may summarize the terms of each financing arrangement in tabular form, using footnotes to provide additional information. For a sample Item 10 table, see Appendix A to this part. For each financing arrangement, disclose:

(i) A description of what the financing covers (*e.g.*, the initial franchise fee, site acquisition, construction or remodeling, initial or replacement equipment or fixtures, opening or ongoing inventory or supplies, or other continuing expenses); [10]

(ii) The identity of the lender(s) providing the financing and any relationship to the franchisor (*e.g.*, affiliate);

(iii) The amount of financing offered or, if the amount depends on an actual cost that may vary, the percentage of the cost that will be financed;

(iv) The annual percentage rate of interest (''APR'') charged, computed as provided by Sections 106–107 of the Consumer Protection Credit Act, 15 U.S.C. 1605–1606. If the APR may differ depending on when the financing is issued, disclose the APR on a specified recent date;

(v) The number of payments or the period of repayment;

(vi) The nature of any security interest required by the lender;

(vii) Whether a person other than the franchisee must personally guarantee the debt;

(viii) Whether the debt can be prepaid and the nature of any prepayment penalty;

(ix) The franchisee's potential liabilities upon default, including any:

(A) Accelerated obligation to pay the entire amount due;

(B) Obligations to pay court costs and attorney's fees incurred in collecting the debt;

(C) Termination of the franchise; or

(D) Liabilities from cross defaults such as those resulting directly from non-payment, or indirectly from the loss of business property; and

(x) Other material financing terms.

(2) Disclose whether any provisions of the loan agreement require franchisees to waive defenses or other legal rights (*e.g.*, confession of judgment), or bar the franchisee from asserting a defense against the lender, the lender's assignee or the franchisor. If so, describe the relevant provisions.

(3) Disclose whether the franchisor's practice or intent is to sell, assign, or discount to a third party all or part of the financing arrangement. If so, disclose:

(i) The assignment terms, including whether the franchisor will remain primarily obligated to provide the financed goods or services; and

(ii) That the franchisee may lose all its defenses against the lender as a result of the sale or assignment.

(4) Disclose whether the franchisor or an affiliate receives any payments for the placement of financing with the lender. If such payments exist:

(i) Disclose the amount or the method of determining the payment; and

(ii) Identify the source of the payment and the relationship of the source to the franchisor or its affiliates.

(k) Item 11: Franchisor's Assistance, Advertising, Computer Systems, and Training. Disclose the franchisor's principal assistance and related obligations as described below. For each obligation, cite the section number of the franchise agreement imposing the obligation. Begin by stating: ''Except as listed below, [the franchisor] is not required to provide any assistance to you.''

(1) Disclose the franchisor's pre-opening obligations to the franchisee including any assistance in:

(i) Locating a site and negotiating the purchase or lease of the site. Disclose:

(A) Whether the franchisor generally owns the premises and leases it to the franchisee;

(B) Whether the franchisor selects the site or approves an area within which the franchisee selects a site. Disclose further how and whether the franchisor must approve a franchisee-selected site;

(C) The factors that the franchisor considers in selecting or approving sites (*e.g.*, general location and neighborhood, traffic patterns, parking, size, physical characteristics of existing buildings, and lease terms);

(D) The time limit for the franchisor to locate or to approve or disapprove the site. Disclose further the consequences if the franchisor and franchisee cannot agree on a site.

(ii) Conforming the premises to local ordinances and building codes and obtaining any required permits;

(iii) Constructing, remodeling, or decorating the premises;

(iv) Hiring and training employees; and

(v) Providing for necessary equipment, signs, fixtures, opening inventory, and supplies. In addition, disclose further:

(A) Whether the franchisor provides these items directly or merely provides the names of approved suppliers;

(B) Whether the franchisor provides written specifications for these items; and

(C) Whether the franchisor delivers or installs these items;

(2) Disclose the typical length of time between the signing of the franchise agreement or the first payment of consideration for the franchise and the opening of the franchisee's business. Describe the factors that may affect the time period such as ability to obtain a lease, financing or building permits, zoning and local ordinances, weather conditions, shortages, or delayed installation of equipment, fixtures, and signs.

(3) Disclose the franchisor's obligations to the franchisee during the operation of the franchise, including any assistance in:

(i) Developing products or services to be offered by the franchisee to its customers;

(ii) Hiring and training employees;

(iii) Improving and developing the franchised business;

(iv) Establishing prices;

(v) Establishing and using administrative, bookkeeping, accounting, and inventory control procedures; and

(vi) Resolving operating problems encountered by the franchisee.

(4) Describe the advertising program for the franchise system. Disclose the following:

(i) The franchisor's obligation to conduct advertising, including:

(A) The media the franchisor may use;

(B) Whether media coverage is local, regional, or national;

(C) The source of the advertising (e.g., an in-house advertising department or a national or regional advertising agency); and

(D) Whether the franchisor must spend any amount on advertising in the area or territory where the franchisee is located.

(ii) Disclose the conditions under which the franchisor permits franchisees to use their own advertising material.

(iii) Disclose whether there is an advertising council composed of franchisees that advises the franchisor on advertising policies. If so, disclose:

[8] Payments due within 90 days on open account financing are not required to be disclosed under this section.

[9] Indirect offers of financing include a written arrangement between a franchisor or its affiliate and a lender, for the lender to offer financing to a franchisee; an arangement in which a franchisor or its affiliate receives a benefit from a lender in exchange for financing a franchise purchase; and a franchisor's guarantee of a note, lease, or other obligation of the franchisee.

[10] Include specimen copies of the financing documents as an exhibit to paragraph (v) of this section. Cite the section and name of the document containing the financing terms and conditions.

(A) How members of the council are selected;

(B) Whether the council serves in an advisory capacity only or has operational or decision-making power; and

(C) Whether the franchisor has the power to form, change, or dissolve the advertising council.

(iv) Disclose whether the franchisee must participate in a local or regional advertising cooperative. If so, disclose:

(A) How the area or membership of the cooperative is defined;

(B) How much the franchisee must contribute to the fund and whether other franchisees are required to contribute at a different rate;

(C) Whether the franchisor-owned outlets must contribute to the fund and, if so, whether it is on the same basis as franchisees;

(D) Who is responsible for administration of the cooperative (*e.g.*, franchisor, franchisees, or advertising agency);

(E) Whether cooperatives must operate from written governing documents and whether the documents are available for review by the franchisee;

(F) Whether cooperatives must prepare annual or periodic financial statements and whether the statements are available for review by the franchisee; and

(G) Whether the franchisor has the power to require cooperatives to be formed, changed, dissolved, or merged.

(v) Disclose whether the franchisee must participate in any other advertising fund. If so, disclose:

(A) Who contributes to the fund;

(B) How much the franchisee must contribute to the fund and whether other franchisees are required to contribute at a different rate;

(C) Whether the franchisor-owned outlets must contribute to the fund and, if so, whether it is on the same basis as franchisees;

(D) Who administers the fund;

(E) Whether the fund is audited and when it is audited;

(F) Whether financial statements of the fund are available for review by the franchisee; and

(G) Use of the fund in the most recently concluded fiscal year, the percentages spent on production, media placement, administrative expenses, and a description of any other use.

(vi) If all advertising funds are not spent in the fiscal year in which they accrue, explain how the franchisor uses the remaining amount. Indicate whether franchisees will receive a periodic accounting of how advertising fees are spent.

(vii) Disclose the percentage of advertising funds, if any, that the franchisor uses principally to solicit new franchise sales.

(5) Disclose whether the franchisor requires the franchisee to buy or use electronic cash registers or computer systems. If so, describe the systems generally in non-technical language.

(i) Identify each hardware component and software program by brand, type, and principal functions.

(A) If the hardware component or software program is the proprietary property of the franchisor, an affiliate, or a third party, state whether the franchisor, an affiliate, or a third party has the contractual right or obligation to provide ongoing maintenance, repairs, upgrades, or updates. Disclose the current annual cost of any optional or required maintenance and support contracts, upgrades, and updates;

(B) If the hardware component or software program is the proprietary property of a third party, and no compatible equivalent component or program has been approved by the franchisor for use with the system to perform the same functions, identify the third party by name, business address, and telephone number, and state the length of time the component or program has been in continuous use by the franchisor and its franchisees;

(C) If the hardware component or software program is not proprietary, identify compatible equivalent components or programs that perform the same functions and indicate whether they have been approved by the franchisor.

(ii) State whether the franchisee has any contractual obligation to upgrade or update any hardware component or software program during the term of the franchise and, if so, whether there are any contractual limitations on the frequency and cost of the obligation.

(iii) For each electronic cash register system or software program, describe how it will be used in the franchisee's business, and the types of business information or data that will be collected and generated. State further whether the franchisor will have independent access to the information and data and, if so, whether there are any contractual limitations on the franchisor's right to access the information and data.

(6) Disclose the table of contents of the franchisor's operating manual(s) provided to franchisees as of the franchisor's last fiscal year-end or a more recent date. State further the number of pages devoted to each subject and the total number of pages in the manual as of this date. Alternatively, this disclosure may be omitted if the prospective franchisee views the manual before purchase of the franchise.

(7) Disclose the franchisor's training program as of the franchisor's last fiscal year-end or a more recent date.

(i) Describe the nature of the training program summarized in tabular form, as follows:

TRAINING PROGRAM

Subject	Hours of classroom training	Hours of on-the-job training	Location

(A) In column (1), state the subjects taught.

(B) In column (2), state the hours of classroom training for each subject.

(C) In column (3), state the hours of on-the-job training for each subject.

(D) In column (4), state the location of the training for each subject.

(ii) Disclose how often training classes are held and the nature of the location or facility where training is held (*e.g.*, company, home, office, franchisor-owned store).

(iii) Describe the nature of instructional materials and the instructor's experience. State the length of experience of the instructor in the field and, specifically, with the franchisor. State only the experience that is relevant to the subject taught and the franchisor's operations;

(iv) Disclose any charges franchisees must pay for training and who must pay travel and living expenses of the enrollees in the training program;

(v) Disclose who may and who is required to attend the training. State whether the franchisee or other persons must complete the program to the franchisor's satisfaction. If successful completion is required, state how long after the signing of the agreement or before the opening of the business the training must be completed. If training is not mandatory, state the percentage of new franchisees that enrolled in the

training program during the preceding 12 months; and

(vi) Whether any additional training programs and/or refresher courses are required.

(l) Item 12: Territory.

(1) Disclose the following information concerning the franchisee's market area (with or without an exclusive territory):

(i) If applicable, the minimum area granted to the franchisee (e.g., a specific radius, a distance sufficient to encompass a specified population, or another specific designation);

(ii) Whether the franchise is granted for a specific location or a location to be approved by the franchisor;

(iii) Any conditions under which the franchisor will approve the relocation of the franchised business or the franchisee's establishment of additional franchised outlets;

(iv) Whether the franchisor has established or may establish another franchisee who may also use the franchisor's trademark within the defined area;

(v) Whether the franchisor has established or may establish franchisor-owned outlets or other channels of distribution using the franchisor's trademark within the defined area;

(vi) Whether the franchisor or its affiliate has established or may establish other franchises or franchisor-owned outlets or another channel of distribution selling or leasing similar products or services under a different trademark within the defined area;

(vii) Restrictions on the franchisor regarding operating franchisor-owned stores or on granting franchised outlets for a similar or competitive business within the defined area; (viii) Restrictions on franchisees from soliciting or accepting orders outside of their defined territories;

(ix) Restrictions on the franchisor from soliciting or accepting orders inside the franchisee's defined territory. State further any compensation that the franchisor must pay for soliciting or accepting orders inside the franchisee's defined territories; and

(x) Franchisee options, rights of first refusal, or similar rights to acquire additional franchises within the territory or contiguous territories.

(2) Describe any exclusive territory granted the franchisee.

(i) If the franchisor grants an exclusive territory, disclose:

(A) Whether continuation of the franchisee's territorial exclusivity depends on achievement of a certain sales volume, market penetration, or other contingency, and under what circumstances the franchisee's territory may be altered. Specify any sales or other conditions. State the franchisor's rights if the franchisee fails to meet the requirements; and

(B) Any other circumstances that permit the franchisor to modify the franchisee's territorial rights (e.g., a population increase in the territory giving the franchisor the right to grant an additional franchise within the area), and the effect of such modifications on the franchisee's rights;

(ii) If the franchisor does not grant exclusive territories, state: ''You will not receive an exclusive territory. [Franchisor] may establish other franchised or franchisor-owned outlets that may compete with your location.''

(3) If the franchisor or an affiliate operates, franchises, or has present plans to operate or franchise a business under a different trademark and that business sells goods or services similar to those to be offered by the franchisee, describe:

(i) The similar goods and services;

(ii) The trade names and trademarks;

(iii) Whether outlets will be franchisor owned or operated:

(iv) Whether the franchisor or its franchisees who use the different trademark will solicit or accept orders within the franchisee's territory;

(v) A timetable for the plan;

(vi) How the franchisor will resolve conflicts between the franchisor and the franchisees and between the franchisees of each system regarding territory, customers or franchisor support; and

(vii) The principal business address of the franchisor's similar operating business. If it is the same as the franchisor's principal business address disclosed in paragraph (a) of this section, disclose whether the franchisor maintains (or plans to maintain) physically separate offices and training facilities for the similar competing business.

(m) Item 13: Trademarks.

(1) Disclose each principal trademark to be licensed to the franchisee. For purposes of this Item, ''principal trademark'' means the primary trademarks, service marks, names, logos, and commercial symbols to be used by the franchisee to identify the franchised business. It does not include every trademark owned by the franchisor.

(2) For each principal trademark, disclose whether the trademark is registered with the United States Patent and Trademark Office.

(i) For each registration, state:

(A) The date and identification number of each trademark registration or registration application;

(B) Whether the franchisor has filed all required affidavits;

(C) Whether any registration has been renewed; and

(D) Whether the principal trademarks are registered on the Principal or Supplemental Register of the U.S. Patent and Trademark Office, and if not, whether an ''intent to use'' application or an application based on actual use has been filed with the U.S. Patent and Trademark Office.

(ii) If the trademark is not registered on the Principal Register of the U.S. Patent and Trademark Office, state: ''By not having a Principal Register federal registration for [name or description of symbol], [name of franchisor] does not have certain presumptive legal rights granted by a registration.''

(3) Disclose any currently effective material determinations of the U.S. Patent and Trademark Office, the Trademark Trial and Appeal Board, or the trademark administrator of any State or court; and any pending infringement, opposition, or cancellation proceeding. Include infringement, opposition, or cancellation proceedings in which the franchisor unsuccessfully sought to prevent registration of a trademark in order to protect a trademark licensed by the franchisor. Describe how the determination affects the franchised business.

(4) Disclose any pending material federal or State litigation regarding the franchisor's use or ownership rights in a trademark. For each pending action, disclose: [11]

(i) The forum and case number;

(ii) The nature of claims made opposing the franchisor's use or by the franchisor opposing another person's use; and

(iii) Any effective court or administrative agency ruling concerning the matter.

(5) Disclose agreements currently in effect that significantly limit the rights of the franchisor to use or license the use of trademarks listed in this Item in a manner material to the franchise. For each agreement, disclose:

(i) The manner and extent of the limitation or grant;

(ii) The extent to which the franchisee may be affected by the agreement;

(iii) The agreement's duration;

(iv) The parties to the agreement;

(v) The circumstances under which the agreement may be canceled or modified; and

(vi) All other material terms.

(6) Disclose whether the franchisor must protect the franchisee's right to use the principal trademarks listed in this Item, and must protect the franchisee

[11] Franchisors may include a summary opinion of counsel concerning any action if a consent to use the summary opinion is included as part of the disclosure document.

against claims of infringement or unfair competition arising out of the franchisee's use of the trademarks. Disclose further:

(i) The franchisee's obligation to notify the franchisor of the use of, or claims of rights to, a trademark identical to or confusingly similar to a trademark licensed to the franchisee;

(ii) Whether the franchise agreement requires the franchisor to take affirmative action when notified of these uses or claims. Identify who has the right to control administrative proceedings or litigation;

(iii) Whether the franchise agreement requires the franchisor to participate in the franchisee's defense and/or indemnify the franchisee for expenses or damages if the franchisee is a party to an administrative or judicial proceeding involving a trademark licensed by the franchisor to the franchisee, or if the proceeding is resolved unfavorably to the franchisee; and

(iv) The franchisee's rights under the franchise agreement if the franchisor requires the franchisee to modify or discontinue the use of a trademark.

(7) Disclose whether the franchisor actually knows of either superior prior rights or infringing uses that could materially affect the franchisee's use of the principal trademarks in the State in which the franchised business is to be located. For each use of a principal trademark that the franchisor believes constitutes an infringement that could materially affect the franchisee's use of a trademark, disclose:

(i) The nature of the infringement;

(ii) The location(s) where the infringement is occurring;

(iii) The length of time of the infringement (to the extent known); and

(iv) Action taken by the franchisor.

(n) Item 14: Patents, Copyrights, and Proprietary Information.

(1) Disclose whether the franchisor owns rights in patents or copyrights that are material to the franchise. For each patent or copyright:

(i) Describe the patent or copyright and its relationship to the franchise;

(ii) State the duration of the patent or copyright;

(iii) For copyrights, state:

(A) The registration number and date of each copyright; and.

(B) Whether the franchisor can and intends to renew the copyright.

(iv) For patents, state:

(A) The patent number, issue date, and title for each patent, and the serial number, filing date, and title of each patent application; and

(B) Describe the type of patent or patent application (e.g., mechanical, process, or design).

(2) Describe any current material determination of the U.S. Patent and Trademark Office, the U.S. Copyright Office, or a court regarding the patent or copyright. Include the forum and case number. Describe how the determination affects the franchised business.

(3) State the forum, case number, claims asserted, issues involved, and effective determinations for any material proceeding pending in the U.S. Patent and Trademark Office or the U.S. Court of Appeals for the Federal Circuit.[12]

(4) If an agreement limits the use of the patent, patent application, or copyright, state the parties to and duration of the agreement, the extent to which the franchisee may be affected by the agreement, and other material terms of the agreement.

(5) Disclose the franchisor's obligation to protect the patent, patent application, or copyright and to defend the franchisee against claims arising from the franchisee's use of the patented or copyrighted items. Disclose further:

(i) Whether the franchisee must notify the franchisor of claims or infringements or if the action is discretionary;

(ii) Whether the franchise agreement requires the franchisor to take affirmative action when notified of infringement. Disclose who has the right to control litigation;

(iii) Whether the franchisor must participate in the defense of a franchisee or indemnify the franchisee for expenses or damages in a proceeding involving a patent, patent application, or copyright licensed to the franchisee;

(iv) Requirements that the franchisee modify or discontinue use of the subject matter covered by the patent or copyright; and

(v) The franchisee's rights under the franchise agreement if the franchisor requires the franchisee to modify or discontinue use of the subject matter covered by the patent or copyright.

(6) If the franchisor actually knows of an infringement that could materially affect the franchisee, disclose:

(i) The nature of the infringement;

(ii) The location(s) where the infringement is occurring;

(iii) The length of time of the infringement; and

(iv) Action taken or anticipated by the franchisor.

(7) If the franchisor claims proprietary rights in other confidential information or trade secrets, describe in general terms the proprietary information communicated to the franchisee and the terms and conditions for use by the franchisee. The franchisor need only describe the general nature of the proprietary information, such as whether a formula or recipe is considered to be a trade secret.

(o) Item 15: Obligation to Participate in the Actual Operation of the Franchise Business.

(1) Disclose the franchisee's obligation to participate personally in the direct operation of the franchise business and whether the franchisor recommends participation. Include obligations arising from any written agreement or from the franchisor's practice.

(2) If personal ''on-premises'' supervision is not required, disclose the following:

(i) If the franchisee is an individual, state:

(A) Whether the franchisor recommends on-premises supervision by the franchisee;

(B) Limitations on whom the franchisee can hire as an on-premises supervisor, and

(C) Whether an on-premises supervisor must successfully complete the franchisor's training program.

(ii) If the franchisee is a business entity, state the amount of equity interest that the on-premises supervisor must have in the franchise.

(3) Disclose any restrictions that the franchisee must place on its manager (e.g., maintain trade secrets, covenants not to compete).

(p) Item 16: Restrictions on What the Franchisee May Sell. Disclose any franchisor-imposed restrictions or conditions on the goods or services that the franchisee may sell or that limit the franchisee's customers. Disclose further:

(1) Any obligation on the franchisee to sell only goods and services approved by the franchisor;

(2) Any obligation on the franchisee to sell all goods and services authorized by the franchisor;

(3) Whether the franchisor has the right to change the types of authorized goods and services and whether there are limits on the franchisor's right to make changes; and

(4) Any restrictions on the franchisee's customers.

(q) Item 17: Renewal, Termination, Transfer, and Dispute Resolution. Disclose, in the tabular form shown below, a table that cross-references each enumerated franchise relationship item with the applicable provision in the franchise or related agreement. Summarize briefly each contractual provision. If a particular item is not applicable, state ''Not Applicable.'' If

[12] Franchisors may include a summary opinion of counsel concerning any action if a consent to use the summary opinion is included as part of the disclosure document.

the agreement is silent concerning one of the listed provisions, but the franchisor unilaterally offers to provide certain benefits or protections to franchisees as a matter of policy, use a footnote to describe this policy and state whether the policy is subject to change.

This table lists certain important provisions of the franchise and related agreements. You should read these provisions in the agreements attached to this disclosure document.

Provision	Section in franchise or other agreement	Summary
a. Length of the franchise term.		
b. Renewal or extension of the term.		
c. Requirements for franchisee to renew or extend.		
d. Termination by franchisee.		
e. Termination by franchisor without cause.		
f. Termination by franchisor with cause.		
g. ''Cause'' defined—curable defaults.		
h. ''Cause'' defined—noncurable defaults.		
i. Franchisee's obligations on termination/non-renewal.		
j. Assignment of contract by franchisor.		
k. ''Transfer'' by franchisee—defined.		
l. Franchisor approval of transfer by franchisee.		
m. Conditions for franchisor approval of transfer.		
n. Franchisor's right of first refusal to acquire franchisee's business.		
o. Franchisor's option to purchase franchisee's business.		
p. Death or disability of franchisee.		
q. Non-competition covenants during the term of the franchise.		
r. Non-competition covenants after the franchise is terminated or expires.		
s. Modification of the agreement.		
t. Integration/merger clause.		
u. Dispute resolution by arbitration or mediation.		
v. Choice of forum.		
w. Choice of law.		

(r) Item 18: Public Figures. Disclose the following information about any public figures involved in the franchise. A public figure means a person whose name or physical appearance is generally known to the public in the geographic area where the franchise will be located.

(1) Any compensation paid or promised to a public figure arising from either the use of the public figure in the franchise name or symbol; or the endorsement or recommendation of the franchise to prospective franchisees.

(2) The extent to which the public figure is involved in the actual management or control of the franchisor. Describe the public figure's position and duties in the franchisor's business structure.

(3) The total investment of the public figure in the franchisor. Describe the extent of the amount contributed in services performed or to be performed. State the type of investment (e.g., common stock, promissory note).

(s) Item 19: Financial Performance Representations.

(1) All franchisors begin by stating:

The FTC's Franchise Rule permits a franchisor to provide information about the actual or potential financial performance of its franchised and/or franchisor-owned outlets, if there is a reasonable basis for the information, and if the information is included in the disclosure document. Financial performance information that differs from that included in Item 19 may be given only where: a franchisor provides the actual records of an existing outlet you are considering buying; or a franchisor provides financial performance information in paragraph (s) of this section and supplements that information by providing, for example, information about possible performance at a particular location.

(2) If a franchisor does not provide any financial performance representations, also state:

This franchisor does not make any representations about a franchisee's financial performance. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you receive any financial performance information or projections of your future income, you should report it to the franchisor's management by contacting [name and address of person to be notified], the Federal Trade Commission, and the appropriate State regulatory agencies.

(3) If the franchisor makes any financial performance representations to prospective franchisees, the franchisor must have a reasonable basis and written substantiation for the representations at the time they are made, and must state the representations in its Item 19 disclosure. The franchisor must also disclose the following:

(i) Whether the representation is an historical financial performance representation about the franchise system's existing outlets,[13] or a subset of those outlets, or is a forecast of the prospective franchisee's future financial performance.[14]

(ii) If the representation relates to the past performance of the franchise system's existing outlets, disclose the material bases for the representation, including:

(A) Whether the representation relates to the performance of all of the franchise system's existing outlets or only to a subset of outlets that share a particular set of characteristics (*e.g.*, geographic location, type of location (such as free

[13] If a financial performance representation is a representation concerning historical financial performance or if historical financial performance data are used as the basis for a forecast of future earnings, the historical data must be prepared according to U.S. generally accepted accounting principles.

[14] A statement or prediction of future performance that is prepared as a forecast in accordance with the statement on standards for accountants' services on prospective financial information (or its successor) issued by the American Institute of Certified Public Accountants, Inc., is presumed to have a reasonable basis.

standing vs. shopping center), degree of competition in the market area, length of time the outlets have been in operation, services or goods sold, services supplied by the franchisor, and whether the units are franchised or franchisor-owned or operated);

(B) The dates during which the reported level of financial performance was achieved;

(C) The total number of outlets that existed in the relevant period and, if different, the number of outlets that had the described characteristics;

(D) The number of outlets with the described characteristics whose actual financial performance data were utilized in arriving at the representation;

(E) Of those outlets whose data were utilized in arriving at the representation, the number and percent that actually attained or surpassed the stated results; [15] and

(F) Characteristics of the included outlets, such as those noted in paragraph (s)(3)(i) of this section, that may differ materially from those of the outlet that may be offered to a prospective franchisee.

(iii) If the representation is a forecast of future financial performance, state the material bases and assumptions on which the projection is based. The material assumptions underlying a forecast include significant factors upon which a franchisee's future results are expected to depend. These factors include, for example, economic or market conditions that are basic to a franchisee's operation, and encompass matters affecting, among other things, a franchisee's sales, the cost of goods or services sold, and operating expenses;

(iv) Include a conspicuous admonition that a new franchisee's individual financial results may differ from the result stated in the financial performance representation; and

(v) State that written substantiation for the financial performance representation will be made available to the prospective franchisee upon reasonable request.[16]

(4) If a franchisor wishes to disclose only the actual operating results for a specific outlet being offered for sale, it is not required to comply with this section, provided the information is given only to potential purchasers of that outlet and is accompanied by the name and last known address of each owner of the outlet during the prior three years.

(5) If financial performance representations are provided in paragraph (s) of this section, the franchisor may deliver to a prospective franchisee a supplemental financial performance representation about a particular location or variation, apart from the disclosure document. The supplemental representation must:

(i) be in writing;

(ii) explain the departure from the financial performance representation in the disclosure document;

(iii) be prepared in accordance with the requirement set forth above in paragraphs (s)(3)(i)–(iii) of this section; and

(iv) be left with the prospective franchisee.

(t) Item 20: Outlets and Franchisee Information.

(1) Disclose, in the tabular form shown below, the status of franchised outlets by State for each of the franchisor's last three fiscal years. For purposes of this paragraph, ''outlets'' includes outlets of a type substantially similar to that offered to the prospective franchisee. A sample Item 20(1) Table is attached as Appendix B to this part.

FRANCHISED OUTLETS SUMMARY FOR YEARS

[YR–3—YR–1]

State and year	Outlets at beginning of fiscal year	Outlets with same ownership at end of fiscal year	Outlets terminated by franchisor during the fiscal year	Outlets reacquired by franchisor during the fiscal year	Outlets transferred by franchisee to new owner during the fiscal year	Outlets that were not renewed during the fiscal year	Outlets that ceased operation or closed for other reasons during the fiscal year	Total number of outlets discontinued during the fiscal year	Total outlets in operation at end of fiscal year
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
State:									
YR–1									
YR–2									
YR–3									
Totals:									
YR–1									
YR–2									
YR–3									

(i) In column (1), list each State where one or more franchised outlets are located. Below each State, list each of the last three fiscal years.

(ii) In column (2), disclose the number of outlets in each State in operation at the beginning of each fiscal year.

(iii) In column (3), disclose the number of outlets in each State where the controlling ownership of the outlet did not change during the year.

(iv) In column (4), disclose the number of outlets in each State where the franchisee operating the outlet at the beginning of the

[15] An historical financial performance representation will have a reasonable basis if it is representative of the usual experience of the system's outlets or a subset of those outlets that share specified characteristics. A representation would not have a reasonable basis if, for example, only a small minority of the stated set of franchisees earn such an amount, if profits were due to non-recurring conditions, of if the franchisees used inconsistent systems for reporting financial performance information.

[16] Franchisors must possess written substantiation for any financial performance representations and must make this substantiation available to prospective franchisees and the Commission upon reasonable request. The franchisor may impose reasonable time and place limitations, and may restrict copying of documents. However, restrictions that as a practical matter frustrate a franchisee's ability to review the franchisor's financial performance information will be deemed to violate the Rule. See Section 436.10(c) (prohibition on failing to make information available). In order to protect franchisees from unwarranted disclosure of sensitive financial information, the franchisor may delete information that might identify the franchisee. This limitation, however, does not apply to disclosures made to the Commission.

fiscal year did not operate the outlet at the end of the fiscal year because the franchisor terminated or canceled the franchise agreement without providing any consideration to the franchisee (whether by payment or forgiveness or assumption of debt) before the end of the agreement term. For purposes of this Item, a termination or cancellation occurs when the franchisor sends the franchisee an unconditional notice of intent to exercise its right to terminate or cancel the franchise agreement.

(v) In column (5), disclose the number of outlets in each State where the franchisee operating the outlet at the beginning of the fiscal year did not operate the outlet at the end of the fiscal year because the franchisor reacquired the outlet for consideration (whether by payment or forgiveness or assumption of debt) from that franchisee before the end of the agreement term.

(vi) In column (6), disclose the number of outlets in each State where the franchisee operating the outlet at the beginning of the fiscal year did not operate the outlet at the end of the fiscal year because that franchisee transferred controlling interest in the franchise to one or more new owners, other than the franchisor or an affiliate, before the end of the agreement term.

(vii) In column (7), disclose the number of outlets in each State where the franchisee operating the outlet at the beginning of the fiscal year did not operate the outlet at the end of the fiscal year because the franchise agreement was not renewed at the end of its term. For purposes of this Item, a nonrenewal occurs when the franchisor sends the franchisee an unconditional notice of intent to exercise its right not to renew the franchise agreement after it expires.

(viii) In column (8), disclose the number of outlets in each State where the franchisee operating the outlet at the beginning of the fiscal year did not operate the outlet at the end of the fiscal year for reasons other than termination, reacquisition, transfer, or post-term non-renewal (include here outlets that are still owned by the franchisee operating the outlet at the beginning of the fiscal year, but which have ceased to do business under the franchise agreement).

(ix) In column (9), disclose the total number of outlets in the State where a franchisee operating an outlet at the beginning of the year did not continue to operate the outlet at the end of the fiscal year. This figure should be the sum of the figures in columns (4) through (8).

(x) In column (10), disclose the number of outlets in each State in operation at the end of the fiscal year.

(xi) Report the ownership status of each outlet only once. The sum of columns (3) and (9) should equal the number of outlets at the beginning of the fiscal year (column 2). If an outlet is involved in more than one ownership change in a given fiscal year, report only the change in ownership by the franchisee operating the outlet at the beginning of the year. If the change in ownership of an outlet could be reported in more than one category, report only the event that occurred first chronologically.

(2) Disclose, in the tabular form shown below, a table showing the status of franchisor-owned outlets by State for each of the franchisor's last three fiscal years. A sample Item 20(2) Table is attached as Appendix C to this part.

FRANCHISOR-OWNED OUTLETS SUMMARY FOR [YR–3—YR–1]

State and year (1)	Outlets operating at the beginning of the fiscal year (2)	Outlets opened during the fiscal year (3)	Outlets closed during the fiscal year (4)	Total number of outlets at the end of the fiscal year (5)
State:				
YR–1				
YR–2				
YR–3				
Totals:				
YR–1				
YR–2				
YR–3				

(i) In column (1), list each State where one or more franchisor-owned outlets are located. Below each State, list each of the last three fiscal years.

(ii) In column (2), disclose the number of franchisor-owned outlets in each State operating at the beginning of each fiscal year.

(iii) In column (3), disclose the number of franchisor-owned outlets opened in each State during each fiscal year.

(iv) In column (4), disclose the number of franchisor-owned outlets closed in each State during each fiscal year.

(v) In column (5), disclose the number of franchisor-owned outlets in operation in each State at the end of each fiscal year.

(3) Disclose, in the tabular form shown below, an estimate for each applicable State that reflects the number of franchised and franchisor-owned outlets to be opened during the one-year period after the close of the franchisor's most recent fiscal year. A sample Item 20(3) Table is attached as Appendix D to this part.

PROJECTED OPENINGS AS OF
[Close of Fiscal Year]

State (1)	Franchise agreements signed but outlet not open (2)	Projected franchised outlets in the next fiscal year (3)	projected franchisor-owned outlets in the next fiscal year (4)
Totals			

(i) In column (1), list each State where the franchisor has signed a franchise agreement, but the outlet is not yet opened, as well as each State where the franchisor expects to open a new outlet (franchisor-owned or franchised) in the next fiscal year.

(ii) In column (2), disclose the number of franchise agreements signed in each State where the outlet is not yet opened.

(iii) In column (3), disclose the projected number of new franchised outlets in each State in the next fiscal year.

(iv) In column (4), disclose the projected number of new franchisor-owned outlets in the next fiscal year.

(4) Disclose the names of all current franchisees and the address and

telephone number of each of their outlets. In the alternative, the franchisor may disclose all franchised outlets in the State, but if these franchised outlets total fewer than 100, disclose franchised outlets from contiguous States and then the next closest State(s) until at least 100 franchised outlets are listed.

(5) Disclose the name and last known home address and telephone number of every franchisee who has had an outlet terminated, canceled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under the franchise agreement during the most recently completed fiscal year or who has not communicated with the franchisor within 10 weeks of the disclosure document issuance date.

(6) If franchisees have signed gag clauses in a franchise agreement, settlement, or in any other contract, during the last three fiscal years:

(i) State: ''In some instances, current and former franchisees sign provisions restricting their ability to speak openly about their experience with [name of franchise system]. While we encourage you to speak with current and former franchisees, be aware that not all such franchisees will be able to communicate with you.''

(ii) Franchisors may also disclose the number and percentage of current and former franchisees who during each of the last three fiscal years have signed agreements that include gag clauses and may disclose the circumstances under which such clauses were signed.

(7) Disclose the name, address, and telephone number of each trademark-specific franchisee organization associated with the franchise system being offered, if such organization:

(i) Has been created, supported, or recognized by the franchisor; or

(ii) Is incorporated and asks the franchisor to be included in the franchisor's disclosure document during the next fiscal year. All such organizations must renew their request for inclusion in disclosure documents on an annual basis. The franchisor has no obligation to verify the organization's continued existence during or at the end of each fiscal year.

(u) Item 21: Financial Statements.

(1) Include the following financial statements prepared according to generally accepted United States accounting principles. Except as provided in paragraph (u)(2) of this section, these financial statements must be audited by an independent certified public accountant. Present the required financial statements in a tabular form that compares at least two fiscal years.

(i) Financial statements: The franchisor's balance sheet for the previous two fiscal year-ends before the disclosure document issuance date. In addition, include statements of operations, of stockholders equity, and of cash flows for each of the franchisor's previous three fiscal years.

(ii) Affiliated company statements: Instead of the disclosure required by paragraph (u)(1)(i) of this Section, the franchisor may include financial statements of its affiliated company if the affiliated company's financial statements satisfy paragraph (u)(1)(i) of this section and the affiliated company absolutely andunconditionally guarantees to assume the duties and obligations of the franchisor under the franchise agreement. The affiliate's guarantee must cover all of the franchisor's obligations to the franchisee, but is not required to extend to third parties. If this alternative is used, disclose the existence of a guarantee.

(iii) Consolidated and separate statements:

(A) When a franchisor owns a direct or beneficial controlling financial interest in another corporation, its financial statements should reflect the financial condition of the franchisor and its subsidiaries.

(B) Include separate financial statements for the franchisor and any subfranchisor or comparable entity.

(C) Include separate financial statements for a company controlling 80 percent or more of a franchisor.

(2) To the extent that start-up franchise systems do not yet have audited financial statements, they may phase-in the use of audited financial statements according to the following schedule:

(i) If this is the franchisor's:	The following financial statements included in the franchisor's disclosure document must be audited.
(A) First partial or full fiscal year selling franchises.	None.
(B) Second fiscal year selling franchises.	Balance sheet opinion as of the end of the last fiscal year.
(C) Third and subsequent fiscal years selling franchises.	All required financial statements for the previous fiscal year, plus any previously disclosed audited statements that still must be disclosed according to paragraph (u)(1)(i) of this section.

(ii) Audited financial statements shall be prepared as soon as practicable.

(iii) Unaudited statements should be in a format that conforms as closely as possible to audited statements.

(iv) Disclose clearly and conspicuously in paragraph (u) of this section the following, if applicable:

(A) The franchisor has not been in business for three years or more, and cannot include all of the financial statements required in paragraph (u)(1)(i) of this section; or

(B) The franchisor includes one or more years of unaudited financial statements.

(v) In the event a start-up franchise system begins offering franchises before the close of its first full fiscal year of operations, provide at a minimum the company's unaudited opening balance sheet.

(v) Item 22: Contracts. Attach a copy of all proposed agreements regarding the franchise offering, including the franchise agreement and any lease, options, and purchase agreements.

(w) Item 23: Receipt.

(1) Include the following detachable acknowledgment of receipt in the form set out below.

(i) State the following:

This disclosure document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If [name of franchisor] offers you a franchise, it must provide this disclosure document to you 14 days before the earlier of:

(1) the signing of a binding agreement; or

(2) any payment to [name of franchisor or affiliate].

You must also receive a franchise agreement containing all material terms at least 5 days before you sign a franchise agreement.

If [name of franchisor] does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and State law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and [State agency].

(ii) Disclose the name, principal business address, and telephone number of any subfranchisor or franchise broker offering the franchise.

(iii) State the issuance date.

(iv) If not disclosed in § 436.5(a), state the name and address of the franchisor's registered agent authorized to receive service of process.

(v) Provide the following statement:

I have received a disclosure document dated ____ that included the following Exhibits:'

(vi) List the title of all attached Exhibits.

(vii) Provide a space for the franchisee's signature and date.

(viii) Franchisors may include any specific instructions for returning the receipt (*e.g.*, street address, E-mail address, facsimile telephone number).

(2) Franchisors shall obtain a signed copy of the receipt at least 5 days before the franchise agreement is signed or the prospective franchisee pays any fee in connection with the franchise sale.

(3) For each completed franchise sale, franchisors shall retain a copy of the signed receipt for a period of at least 3 years.

Subpart D—Instructions

§ 436.6 Instructions for Preparing Disclosure Documents

(a) Disclose the information required in sections 436.3–436.5 clearly, legibly, and concisely stated in a single document, using plain English.

(b) Respond fully to each disclosure Item. If a particular disclosure Item is not applicable, respond negatively, including a reference to the type of information required to be disclosed by the Item. Precede each disclosure Item with the appropriate heading.

(c) Do not include any materials or information other than that required by this Rule or by State law not preempted by this Rule. Franchisors may prepare multi-State disclosure documents by including State-specific information in the text of the disclosure document or in Exhibits attached to the disclosure document.

(d) Subfranchisors should disclose the required information about the franchisor, and, to the extent applicable, the same information concerning the subfranchisor.

§ 436.7 Instructions For Electronic Disclosure Documents.

Franchise sellers can furnish disclosures electronically under the following conditions:

(a) The prospective franchisee expressly consents to accept the disclosures in the electronic medium offered by the franchise seller. Prospective franchisees, however, always retain the right to obtain a paper disclosure document from the franchise seller up until the time of the sale.

(b) The franchise seller simultaneously furnishes the prospective franchisee with a paper summary document containing only the following three items from the franchisor's disclosure document:

(1) The cover page;

(2) The table of contents; and

(3) Two copies of the franchisor's Item 23 Receipt, with instructions to acknowledge receipt through a signature.

(c) The electronic version of the franchisor's disclosure document must be capable of being printed, downloaded onto computer disk, or otherwise preserved by a prospective franchisee as one single document.

(d) The electronic version of the franchisor's disclosure document must be a self-contained document that is the functional equivalent of a paper disclosure document. A prospective franchisee must be able to read each part of the disclosure document, including attachments, without having to take any affirmative action other than scrolling through the document.

(e) For the sole purpose of enhancing the prospective franchisee's ability to maneuver through the electronic version of the disclosure document, the franchisor may include scroll bars, internal links, and search features. All other features (e.g., multimedia tools such as audio, video, animation, or pop-up screens) are prohibited.

(f) The electronic version of the franchisor's disclosure document must remain accessible at least until the time of the sale. An electronic version will still be deemed accessible if technological failures occur that are beyond the franchisor's reasonable control. Further, an electronic version on the Internet will be deemed accessible if it is updated and replaced with a more current version.

(g) Franchisors furnishing disclosure documents electronically must retain, and make available to the Commission upon request, a specimen copy of each materially different version of their electronic disclosure documents for a period of three years.

§ 436.8 Instructions For Updating Disclosures

(a) All information contained in the disclosure document shall be current as of the close of the franchisor's most recent fiscal year. After the close of the fiscal year, the franchisor shall, within 90 days, prepare a revised disclosure document, after which the franchisor may distribute only the revised document and no other.

(b) The franchisor shall, within a reasonable time after the close of each quarter of the fiscal year, prepare revisions to be attached to the disclosure document to reflect any material change in the franchisor or relating to the franchise business of the franchisor. Each prospective franchisee shall receive the disclosure document and the quarterly revisions for the most recent period available at the time.

(c) When furnishing a disclosure document, the franchise seller shall notify the prospective franchisee of any additional material change in the franchisor, the franchise business, or franchise agreement that has occurred since the last quarterly disclosure document revision. Franchise sellers shall also notify the prospective franchisee of any other known material change in the franchisor, the franchise business, or franchisee agreement at the time the completed franchise agreements are delivered to the prospective franchisee pursuant to section 436.2(a)(2).

(d) Information that is required to be audited pursuant to § 436.5(u) is not required to be audited for quarterly revisions; provided, however, that the franchisor states in immediate conjunction with the information that such information has not been audited.

Subpart E—Other Provisions

§ 436.9 Exemptions. The disclosure requirements of sections 436.2—436.8 shall not apply if the franchisor can establish any of the following:

(a) The total of the required payments to the franchisor or an affiliate that are made any time before to within six months after commencing operation of the franchisee's business is less than $500, not including payment for the purchase of reasonable amounts of inventory at bona fide wholesale prices for resale.

(b) The franchise relationship is a fractional franchise.

(c) The franchise relationship is a leased department.

(d) The franchise relationship is covered by the Petroleum Marketing Practices Act, 15 U.S.C. 2801.

(e)(1) The franchisee's estimated investment, excluding any financing received from the franchisor or an affiliate, totals at least $1.5 million and the prospective franchisee signs an acknowledgment verifying the grounds for the exemption; or

(2) The franchisee is a corporation that has been in business for at least five years and has a net worth of at least $5 million. Provided, however, that the Commission may publish revised thresholds once every four years to adjust for inflation.

(f) One or more purchasers of at least a 50 percent ownership interest in the franchise are, or have been within 60 days of the sale, an officer, director, managing agent, or an owner of at least a 25 percent interest in the franchisor, for at least 24 months.

(g) There is no written document that describes any material term or aspect of the relationship or arrangement.

§ 436.10 Additional Prohibitions.

It is an unfair or deceptive act or practice in violation of section 5 of the Federal Trade Commission Act for any franchise seller to:

(a) Make any claim or representation, orally, visually, or in writing, that contradicts the information required to be disclosed by this Rule.

(b) Fail to return any funds or deposits in accordance with any conditions disclosed in the franchisor's disclosure document, franchise agreement, or related document.

(c) Fail to make available to prospective franchisees, and to the Commission upon reasonable request, written substantiation for any financial performance representations made in § 436.5(s).

(d) Disseminate any financial performance representation to prospective franchisees, including any representations made in the general media and Internet, unless the franchise seller has a reasonable basis for the representation, has written substantiation for the claim at the time the claim is made, and the representation is included in § 436.5(s) of the franchisor's disclosure document. In conjunction with any such financial performance representation, the franchise seller shall also:

(1) Disclose the information required by § 436.5(s)(3)(ii)(E) if the representation relates to the past performance of the franchisor's outlets; and

(2) Include a conspicuous admonition that a new franchisee's individual financial results may differ from the result stated in the financial performance representation.

(e) Disclaim or require a prospective franchisee to waive reliance on any representation made in the disclosure document or its exhibits or amendments. Provided, however, that a prospective franchisee can agree to contractual terms and conditions that differ from those specified in a disclosure document if:

(1) the franchise seller identifies the changed terms and conditions;

(2) the prospective franchisee initials the changes; and

(3) the prospective franchisee has 5 days before signing the contract or paying any fee to review the revised contract.

(f) Misrepresent that any person:

(1) Has purchased a franchise from the franchisor or operated a franchise of the type offered by the franchisor; or

(2) Is able to provide an independent and reliable report about the franchise or the experiences of any current or former franchisees.

§ 436.11 Other Laws, Rules, Orders.

(a) The Commission does not approve or otherwise express any opinion on the legality of any matter a franchisor may be required to disclose by this Rule. Further, franchisors may have other obligations to disclose material information to prospective franchisees under section 5 of the Federal Trade Commission Act. The Commission also intends to enforce all applicable statutes and trade regulation rules.

(b) If an outstanding FTC order applies to a franchisor but differs from any provision of this regulation, the franchisor can petition the Commission to amend the order.

(c) The FTC does not intend to preempt the franchise practices laws of any State or local government, except to the extent of any inconsistency with this Rule. A law is not inconsistent with this Rule if it affords prospective franchisees equal or greater protection, such as registration of disclosure documents or more extensive disclosures.

§ 436.12 Severability.

If any provision of this regulation is stayed or held invalid, the remainder will stay in force.

Appendix A: Sample Item 10 Table

SUMMARY OF FINANCING OFFERED

Item financed	Amount financed	Down payment	Term (yrs)	APR (percent)	Monthly payment	Prepay penalty	Security required	Liability upon default	Loss of legal rights on default
Initial fee									
Land/Constr									
Leased space									
Equip. lease									
Equip. purchase									
Opening inventory									
Other financing									

Appendix B: Sample Item 20(1) Table

FRANCHISED OUTLET SUMMARY FOR YEARS 1995–1997

State and year	Outlets at beginning of fiscal year	Outlets with same ownership at end of fiscal year	Outlets terminated by franchisor during the fiscal year	Outlets reacquired by franchisor during the fiscal year	Outlets transferred by franchisee to new owner during the fiscal year	Outlets that were not renewed during the fiscal year	Outlets that ceased operation or closed for other reasons during the fiscal year	Total number of outlets discontinued during the fiscal year	Total outlets in operation at end of fiscal year
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
AL:									
1997	2	1	1	0	0	0	0	1	1
1996	2	2	0	0	0	0	0	0	2
1995	1	1	0	0	0	0	0	0	2

FRANCHISED OUTLET SUMMARY FOR YEARS 1995–1997—Continued

State and year (1)	Outlets at beginning of fiscal year (2)	Outlets with same ownership at end of fiscal year (3)	Outlets terminated by franchisor during the fiscal year (4)	Outlets reacquired by franchisor during the fiscal year (5)	Outlets transferred by franchisee to new owner during the fiscal year (6)	Outlets that were not renewed during the fiscal year (7)	Outlets that ceased operation or closed for other reasons during the fiscal year (8)	Total number of outlets discontinued during the fiscal year (9)	Total outlets in operation at end of fiscal year (10)
MI:									
1997	4	3	1	0	0	0	0	1	4
1996	7	4	0	0	2	1	0	3	4
1995	8	6	0	1	0	0	1	2	7
WY:									
1997	3	2	0	0	0	0	1	1	2
1996	1	1	0	0	0	0	0	0	3
1995	0	0	0	0	0	0	0	0	1
Totals:									
1997	9	6	2	0	0	0	1	3	7
1996	10	7	0	0	2	1	0	3	9
1995	9	7	0	1	0	0	1	2	10

Appendix C: Sample Item 20(2) Table

FRANCHISOR-OWNED OUTLETS SUMMARY FOR 1995–1997

State and year (1)	Outlets operating at the beginning of the fiscal year (2)	Outlets opened during the fiscal year (3)	Outlets closed during the fiscal year (4)	Total number of outlets at the end of the fiscal year (5)
AL:				
1997	5	0	0	5
1996	3	2	0	5
1995	4	2	3	3
MI:				
1997	4	1	0	5
1996	6	0	2	4
1995	5	2	1	6
WY:				
1997	1	0	0	1
1996	0	2	1	1
1995	0	0	0	0
Totals:				
1997	10	1	0	11
1996	9	4	3	10
1995	9	4	4	9

Appendix D: Sample Item 20(3) Table

PROJECTED OPENINGS AS OF DECEMBER 31, 1997

State (1)	Franchise agreements signed but outlet not open (2)	Projected franchised outlets in the next fiscal year (3)	Projected franchisor-owned outlets in the next fiscal year (4)
AL	1	1	0
MI	0	3	2
WY	1	0	0
Totals	2	4	2

By direction of the Commission.

Donald S. Clark,

Secretary.

NPR Attachment A—Table of Commenters

Comment 1. Kevin Brendan Murphy, Esq., Mr. Franchise (''Murphy'')
Comment 2. Murphy (see *supra*, Comment 1)
Comment 3. Mike Bruce, The Michael Bruce Fund (''Bruce'')
Comment 4. Harold Brown, Esq., Brown & Stadfeld (''Brown'')
Comment 5. Frances L. Diaz, Esq. (''Diaz'')
Comment 6. Brown (see *supra*, Comment 4)
Comment 7. Diaz (see *supra*, Comment 5)
Comment 8. Marian Kunihisa (''Kunihisa'')
Comment 9. Kevin Bores, Domino's Pizza Franchisee (''Bores'')
Comment 10. Terrence L. Packer, Supercuts Franchisee (''Packer'')
Comment 11. John Delasandro (''Delasandro'')
Comment 12. William Cory (''Cory'')
Comment 13. Joseph Manuszak, Domino's Pizza Franchisee (''Manuszak'')
Comment 14. Daryl Donafin, Taco Bell Franchisee (''Donafin'')
Comment 15. David Muncie, National Claims Service, Inc. (''Muncie'')
Comment 16. Patrick E. Meyers, The Quizno's Corporation (''Quizno's'')
Comment 17. David Weaver, Domino's Pizza Franchisee (''Weaver'')
Comment 18 Karen M. Paquet, Domino's Pizza Franchisee (''Paquet'')
Comment 19. Gary R. Duvall, Esq., Graham & Dunn (''Duvall'')
Comment 20. Andrew J. Sherman, Esq., Greenberg & Traurig (''Sherman'')
Comment 21. S. Beavis Stubbings, Esq. (''Stubbings'')
Comment 22. Jim & Evalena Gray, Pearle Vision Franchisee (''J&E Gray'')
Comment 23. Ernest Higginbotham, et al., Strasburger & Price (''Higginbotham'')
Comment 24. Henry C. Su, Esq., & Byron Fox, Esq. (''Su'')
Comment 25. John R.F. Baer, Esq., Keck, Mahin & Cate (''Baer'')
Comment 26. Clay Small, Esq., & Lowell Dixon, Esq., Nat'l Franchise Mediation Program Steering Committee (''NFMP'')
Comment 27. Richard T. Catalano, Esq. (''Catalano'')
Comment 28. Neil Simon, Esq., & Erik Wulff, Esq., Hogan & Hartson (''Hogan & Hartson'')
Comment 29. Glenn A. Mueller, Domino's Pizza Franchisee (''Mueller'')
Comment 30. Doug Bell, et al., Supercuts Franchisees (''Supercuts Franchisees'')
Comment 31. Michael L. Bennett, The Longaberger Co. (''Longaberger'')
Comment 32. John Rachide, Domino's Pizza Franchisee (''Rachide'')
Comment 33. David J. Kaufmann, Esq., Kaufmann, Feiner, Yamin, Gildin & Robbins (''Kaufmann'')
Comment 34. Joseph N. Mariano, Esq., Direct Selling Association (''DSA'')
Comment 35. Linda F. Golodner & Susan Grant, National Consumers League (''NCL'')
Comment 36. Jere W. Glover, Esq., & Jennifer A. Smith, Esq., U.S. Small Business Administration, Office of Chief Counsel for Advocacy (''SBA Advocacy'')
Comment 37. Robert Chabot, Domino's Pizza Franchisee (''Chabot'')
Comment 38. Teresa Maloney, National Coalition of Associations of 7–Eleven Franchisees (''Maloney'')
Comment 39. BLANK
Comment 40. Harold L. Kestenbaum, Esq. (''Kestenbaum'')
Comment 41. Samuel L. Sibent, KFC Franchisee (''Sibent'')
Comment 42. Oren C. Crothers, KFC Franchisee (''Crothers'')
Comment 43. Matthew Jankowski, KFC Franchisee (''Jankowski'')
Comment 44. Rodney A. DeBoer, KFC Franchisee (''DeBoer'')
Comment 45. Liesje Bertoldi, KFC Franchisee (''L. Bertoldi'')
Comment 46. Steve Bertoldi, KFC Franchisee (''S. Bertoldi'')
Comment 47. Charles Buckner, KFC Franchisee (''Buckner'')
Comment 48. Walter J. Knezevich, KFC Franchisee (''Knezevich'')
Comment 49. Jeffrey W. Gray, KFC Franchisee (''J. Gray'')
Comment 50. Fred Jackson, KFC Franchisee (''Jackson'')
Comment 51. Ronald L. Rufener, KFC Franchisee (''Rufener'')
Comment 52. Tim Morris, KFC Franchisee (''Morris'')
Comment 53. Scarlett Norris Adams, KFC Franchisee (''Adams'')
Comment 54. Calvin G. White, KFC Franchisee (''White'')
Comment 55. Nick Iuliano, KFC Franchisee (''N. Iuliano'')
Comment 56. Dolores Iuliano, KFC Franchisee (''D. Iuliano'')
Comment 57. Ralph A. Harman, KFC Franchisee (''R. Harman'')
Comment 58. Saundra S. Harman, KFC Franchisee (''S. Harman'')
Comment 59. Richard Braden, KFC Franchisee (''Braden'')
Comment 60. K.F.C. of Pollys, KFC Franchisee (''Pollys'')
Comment 61. Joan Fiore, McDonald's Franchisee (''Fiore'')
Comment 62. Susan P. Kezios, American Franchisee Association (''AFA'')
Comment 63. Kenneth R. Costello, Esq., Loeb & Loeb, LLP (''Loeb & Loeb'')
Comment 64. AFA (see *supra* Comment 62)
Comment 65. Susan Rich, KFC Franchisee (''Rich'')
Comment 66. Fiore (see *supra* Comment 61)
Comment 67. Mike Johnson, Subway Franchisee (''Johnson'')
Comment 68. Laurie Gaither, GNC Franchisee (''L. Gaither'')
Comment 69. Greg Gaither, GNC Franchisee (''G. Gaither'')
Comment 70. Greg Suslovic, Subway Franchisee (''Suslovic'')
Comment 71. Richard Colenda, GNC Franchisee (''Colenda'')
Comment 72. Bob Gagliati, GNC Franchisee (''Gagliati'')
Comment 73. Pat Orzano, 7-Eleven Franchisee (''Orzano'')
Comment 74. Linda Gaither, GNC Franchisee (''Li Giather'')
Comment 75. Kevin 100 (''Kevin 100'')
Comment 76. Robert James, Florida Dept. of Agriculture & Consumer Services (''James'')
Comment 77. Robert A. Tingler, Esq., Office of the Attorney General, State of Illinois (''IL AG'')
Comment 78. John M. Tifford, Esq., Rudnick, Wolfe, Epstien & Zeidman (''Tifford'')
Comment 79. Robert L. Purvin, Jr. (''Purvin'')
Comment 80. Teresa Heron (''Heron'')
Comment 81. Purvin (See *supra* Comment 79)
Comment 82. Matthew R. Shay, Esq., International Franchise Association (''IFA'')
Comment 83. Duvall (See *supra* Comment 19)
Comment 84. Lance Winslow, Car Wash Guys (''Winslow'')
Comment 85. Winslow (See *supra* Comment 84)
Comment 86. Rick Geu, The Pampered Chef, Ltd. (''Pampered Chef'')
Comment 87. John M. Tifford, Esq., Coverall North America, Inc. (''Coverall'')
Comment 88. John M. Tifford, Esq., Merchandise Mart Properties, Inc. (''Merchandise Mart'')
Comment 89. Dirk C. Bloemendaal, Esq., Amway Corporation (''Amway'')
Comment 90. Winslow (See *supra* Comment 84)
Comment 91. Winslow (See *supra* Comment 84)
Comment 92. Winslow (See *supra* Comment 84)
Comment 93. Winslow (See *supra* Comment 84)
Comment 94. Andrew A. Caffey, Esq. (''Caffey'')
Comment 95. Entrepreneur Media, Inc. (''Entrepreneur'')
Comment 96. Brown (See *supra* Comment 4)
Comment 97. Raymond & Robert Buckley, Scorecard Plus Franchisee (''Buckley'')
Comment 98. Mark A. Kirsch, Esq., Rudnick, Wolfe, Epstien & Zeidman (''Kirsch'')
Comment 99. Dale E. Cantone, Esq., Maryland Division of Securities, Office of the Maryland Attorney General (''MD Securities'')
Comment 100. Roger C. Haines, Scorecard Plus Franchisee (''Haines'')
Comment 101. David E. Myklebust, Scorecard Plus Franchisee (''Myklebust'')
Comment 102. Robert Larson (''Larson'')
Comment 103. Brown (See *supra* Comment 4)
Comment 104. Mark B. Forseth, Esq., CII Enterprises (''CII'')
Comment 105. Bertrand T. Ungar, Esq., PR ONE, LLC (''PR ONE'')
Comment 106. Dennis E. Wieczorek, Esq., Rudnick & Wolfe (''Wieczorek'')
Comment 107. Gerald A. Marks, Esq., Marks & Krantz (''Marks'')
Comment 108. Brown (See *supra* Comment 4)
Comment 109. Everett W. Knell (''Knell'')
Comment 110. Anne Crews, Mary Kay, Inc. (''Mary Kay'')
Comment 111. Carl Letts, Dominos Pizza Franchisee (''Letts'')
Comment 112. Kat Tidd, Esq. (''Tidd'')

Comment 113. Ted Poggi, National Coalition of Associations of 7-Eleven Franchisees (''NCA 7-Eleven Franchisees'')
Comment 114. Gary R. Duvall, Esq., & Nadine C. Mandel, Esq. (Duvall & Mandel)
Comment 115. Sherry Christopher, Esq., Christopher Consulting, Inc. (''Christopher'')
Comment 116. Carl C. Jeffers, Intel Marketing Systems, Inc. (''Jeffers'')
Comment 117. Deborah Bortner, Esq., State of Washington, Department of Financial Institutions, Securities Division (''WA Securities'')
Comment 118. Carmen D. Caruso, Esq., Noonan & Caruso (''Caruso'')
Comment 119. Howard Bundy, Esq., Bundy & Morrill, Inc. (''Bundy'')
Comment 120. Franchise & Business Opportunity Committee, North American Securities Administrators Association, Inc. (''NASAA'')
Comment 121. Tifford (See *supra* Comment 78)
Comment 122. Wieczorek (See *supra* Comment 106)
Comment 123. John & Debbie Lopez, Baskin Robbins Franchisee (''Lopez'')
Comment 124. Susan R. Essex, Esq., & Ted S. Storey, Esq., Business Law Section, The State Bar of California (''CA BLS'')
Comment 125. Peter C. Lagarias, Esq., The Legal Solutions Group (''Lagarias'')
Comment 126. Jame G. Merret, Jr. (''Merret'')
Comment 127. W. Michael Garner, Esq., Dady & Garner (''Dady & Garner'')
Comment 128. Jeff Brickner (''Brickner'')
Comment 129. Bernard A. Brynda, Baskin Robbins Franchisee (''Brynda'')
Comment 130. Caron B. Slimak, Jacadi USA Franchisee (''Slimak'')
Comment 131. Dr. Ralph Geiderman, Pearl Vision Franchisee (''Geiderman'')
Comment 132. Felipe Frydman, Minister, Economic & Trade Affairs, Embassy of the Argentine Republic (''Argentine Embassy'')
Comment 133. Andrew C. Selden, Esq., Briggs & Morgan (''Selden'')
Comment 134. Robert Zarco, Esq., et al., Zarco & Pardo (''Zarco & Pardo'')
Comment 135. Jason H. Griffing, Baskin Robbins Franchisee (''Griffing'')
Comment 136. Erik H. Karp, Esq., Witmer, Karp, Warner & Thuotte (''Karp'')
Comment 137. William D. Brandt, Esq., Ferder, Brandt, Casebeer, Cooper, Hoyt & French (''Brandt'')
Comment 138. Robert S. Keating, Baskin Robbins Franchisee (''Keating'')
Comment 139. A. Patel, Baskin Robbins Franchisee (''A. Patel'')
Comment 140. Joel R. Buckberg, Cendant Corporation (''Cendant'')
Comment 141. Duvall (See *supra,* Comment 19)
Comment 142. NCL (See *supra,* Comment 35)
Comment 143. AFA (See *supra,* Comment 62)
Comment 144. Catalano (See *supra,* Comment 27)
Comment 145. DSA (See *supra,* Comment 34)
Comment 146. Keating, (See *supra,* Comment 139)
Comment 147. Kathie & David Leap, Baskin Robbins Franchisee (''Leap'')
Comment 148. Ted D. Kuhn, Baskin Robbins Franchisee (''Kuhn'')
Comment 149. Mike S. Lee, Baskin Robbins Franchisee (''Lee'')
Comment 150. R. Deilal, Baskin Robbins Franchisee (''Deilal'')
Comment 151. Frank J. Demotto, Baskin Robbins Franchisee (''Demotto'')
Comment 152. Thomas Hung, Baskin Robbins Franchisee (''Hung'')
Comment 153. Jean Jones, Baskin Robbins Franchisee (''Jones'')
Comment 154. Hang, Baskin Robbins Franchisee (''Hang'')
Comment 155. Dilip Patel, Baskin Robbins Franchisee (''D. Patel'')
Comment 156. Terry L. Glase, Baskin Robbins Franchisee (''Glase'')
Comment 157. R.E. Williamson, Baskin Robbins Franchisee (''Williamson'')
Comment 158. R.M. Valum, Baskin Robbins Franchisee (''Valum'')
Comment 159. Rajendra Patel, Baskin Robbins Franchisee (''R. Patel'')
Comment 160. Jerry & Debbie Robinett, Baskin Robbins Franchisee (''Robinett'')
Comment 161. Ronald J. Rudolf, Baskin Robbins Franchisee (''Rudolf'')
Comment 162. Kamlesh Patel, Baskin Robbins Franchise (''K. Patel'')
Comment 163. Nicholas & Marilyn Apostal, Baskin Robbins Franchisee (''Apostal'')
Comment 164. Patrick Sitin, Baskin Robbins Franchisee (''Sitin'')
Comment 165. Paul & Lisa SeLander, Baskin Robbins Franchisee (''SeLander'')
Comment 166. S. Bhilnym, Baskin Robbins Franchisee (''Bhilnym'')
Comment 167. Mike & Kathy Denino, Baskin Robbins Franchisee (''Denino'')

NPR Attachment B—Workshop Conferences: Panelists

Michael Bennett, Esq., Longaberger Company (''Bennett'')
Kennedy Brooks, Esq. (''Brooks'')
John Brown, Esq., Amway Corporation (''J. Brown'')
Howard Bundy, Esq., Bundy & Morrill (''Bundy'')
Delia Burke, Esq., Jenkins & Gilchrist (''Burke'')
Andrew Caffey, Esq. (''Caffey'')
Dale Cantone, Esq., Office of the Maryland Attorney General (''Cantone'')
Emilio Casillas, Washington State Securities Division (''Casillas'')
Richard Catalano, Esq. (''Catalano'')
Sherry Christopher, Esq. (''Christopher'')
Martin Cordell, Esq., Washington State Securities Division (''Cordell'')
John D'Alessandro (''D'Alessandro'')
Gary Duvall, Esq., Graham & Dunn (''Duvall'')
Eric Ellman, Esq., Direct Selling Association (''Ellman'')
David Finnigan, Esq., Illinois Securities Department (''Finnigan'')
Mark B. Forseth, Esq., Jenkens & Gilchrist (''Forseth'')
Elizabeth Garceau, PRO Design (''E. Garceau'')
Michael Garceau, PRO Design (''M. Garceau'')
Roger Gerdes, Microsoft Corporation (''Gerdes'')
Rick Geu, Esq., The Pampered Chef (''Geu'')
Judy Gitterman, Esq., Jenkens & Gilchrist (''Gitterman'')
Susan Grant, National Consumers League (''Grant'')
Tee Houston-Aldridge, World Inspection Network (''Houston-Aldridge'')
Robert James, Florida Dept. of Agriculture & Consumer Services (''James'')
Carl Jeffers, Intel Marketing Systems (''Jeffers'')
David Kaufmann, Esq., Kaufmann, Feiner, Yamin, Gildin & Robbins (''Kaufmann'')
Harold Kestenbaum, Esq., Hollenburg, Bleven, Solomon, Ross (''Kestenbaum'')
Susan Kezios, America Franchisee Association (''Kezios'')
Mark Kirsch, Esq., Rudnick, Wolfe, Epstien & Zeidman (''Kirsch'')
Mike Ludlum, Entrepreneur Media (''Ludlum'')
Philip McKee, National Consumers League (''McKee'')
Joseph Punturo, Esq., Office of the New York Attorney General (''Punturo'')
Philip Sanson, Esq., Illinois Securities Department (''Sanson'')
Matthew Shay, Esq., International Franchise Association (''Shay'')
David Silverman, Sportsworld Int'l. (''Silverman'')
Neil Simon, Esq., Hogan & Hartson (''Simon'')
J. H. Snow, Esq., Jenkens & Gilchrist (''Snow'')
Adam Sokol, Esq., Illinois Attorney General's Office (''Sokol'')
Kat Tidd, Esq. (''Tidd'')
John Tifford, Esq., Rudnick, Wolfe, Epstien & Zeidman (''Tifford'')
Bertrand Unger, Esq., PR ONE (''Unger'')
Dick Way, PR ONE (''Way'')
Dennis Wieczorek, Esq., Rudnick & Wolfe (''Wieczorek'')
Erik Wulff, Esq., Hogan & Harston (''Wulff'')
Barry Zaslav, Coverall North America (''Zaslav'')
Michael W. Chiodo, Domino's Franchisee (''Chiodo'')
Joseph Cristiano, Carvel Franchisee (''Cristiano'')
John D'Alessandro, Quaker State Quick Lube Distributor (''D'Alessandro'')
Mark Deutsch, Former Franchisee (''Deutsch'')
Steve Doe,'' Franchisee (''Doe'')
Debbie Fetzer (''Fetzer'')
Richard W. Galloway, Domino's Pizza Franchisee (''Galloway'')
Bruce Hoar & Thomas Hoar, Hanes Franchisee (''Hoar'')
Nelson Hockert-Lotz, Domino's Franchisee (''Hockert-Lotz'')
Robert L. James, Florida Dept. of Agriculture & Consumers Services (''James'')
Eric Karp, Esq., Witmer, Karp, Warner & Thuotte (''Karp'')
Susan Kezios, American Franchisee Association (''Kezios'')
Charles Lay, Brite Site Franchisee (''Lay'')
Marge Lundquist, Franchisee (''Lundquist'')
Gerald Marks, Esq., Marks & Krantz (''Marks'')
Dianne Mousley, Mike Schmidt's Phil. Hoagies Franchisee (''Mousley'')
Mehran Rafizadeh, GNC Franchisee (''Rafizadeh'')

David W. Raymond, Esq. (''Raymond'')
Iris Sandow, Blimpie Franchisee (''Sandow'')
Caron Slimak, Jacadi Franchisee (''Slimak'')
Robert Tingler, Esq., Franchise Bureau Chief, Illinois Attorney General's Office (''Tingler'')
Dr. Spencer Vidulich, Pearle Vision Franchisee (''Vidulich'')

[FR Doc. 99–27425 Filed 10–21–99; 8:45 am]
BILLING CODE 6750–01–P

federal register

Friday
October 22, 1999

Part V

Department of Education

Office of Special Education and Rehabilitative Services, Rehabilitation Short-Term Training; Notice

DEPARTMENT OF EDUCATION

Rehabilitation Short-Term Training

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority for fiscal year (FY) 2000 and subsequent fiscal years

SUMMARY: The Secretary proposes a funding priority under the Rehabilitation Short-Term Training program. The Secretary may use this priority for competitions in FY 2000 and in subsequent fiscal years. The Secretary takes this action to support special seminars, institutes, workshops, and other short-term courses in technical matters relating to the vocational, medical, social, and psychological rehabilitation programs, independent living services programs, and client assistance programs.

DATES: We must receive your comments on or before November 22, 1999.

ADDRESSES: All comments concerning this proposed priority should be addressed to Dr. Beverly Brightly, U.S. Department of Education, 400 Maryland Avenue, SW., Mary E. Switzer Building, room 3327, Washington, DC 20202–2649. If you prefer to send your comments through the Internet, use the following address: Beverly__Brightly@ed.gov

You must include the term ''Rehabilitation Short-Term Training Program'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Dr. Beverly Brightly. Telephone (202) 205–9561. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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.

SUPPLEMENTARY INFORMATION: The Short-Term Training program is authorized under section 302(a) of the Rehabilitation Act of 1973, as amended.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

This proposed priority would address the National Education Goal that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The proposed priority furthers the objectives of this Goal by focusing available funds on projects that improve the skills of Client Assistance Program staff, which will improve the responsiveness of the vocational rehabilitation system to adults with disabilities and their vocational pursuits.

The Secretary will announce the final priority in a notice in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priority, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does *not* solicit applications. In any year in which the Secretary chooses to use this proposed priority, the Secretary invites applications through a notice published in the **Federal Register**. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priority.

Priority

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority:

A project must—

- Provide training to Client Assistance Program (CAP) personnel on an as-needed basis, including—

(1) Management training on skills needed for strategic and operational planning and direction of CAP services;

(2) Advocacy training on skills and knowledge needed by CAP staff to assist persons with disabilities to gain access to and to use the services and benefits available under the Rehabilitation Act of 1973, as amended, with particular emphasis on new statutory and regulatory requirements;

(3) Systemic advocacy training on skills and knowledge needed by CAP staff to address programmatic issues of concern;

(4) Training and technical assistance on CAP best practices; and

(5) Training on skills and knowledge needed by CAP staff to perform additional responsibilities required by the Workforce Investment Act of 1998, as amended.

- Coordinate training efforts with other training supported by the Rehabilitation Services Administration, as well as with the training supported by the Center for Mental Health Services and the Administration on Developmental Disabilities on common areas such as protection and advocacy, financial management, and trial advocacy.
- Include both national and regional training seminars in each project year.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

We invite you to submit comments and recommendations regarding this proposed priority. During and after the comment period, you may inspect all public comments about this proposed priority in the Mary E. Switzer Building, room 3217, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet 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 (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number 84.246K Rehabilitation Short-Term Training)

Program authority: 29 U.S.C. 721(b) and (e) and 796(e).

Dated: October 19, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–27688 Filed 10–21–99; 8:45 am]

BILLING CODE 4000–01–U

federal register

Friday
October 22, 1999

Part VI

Department of Education

34 CFR Part 668

Student Assistance General Provisions; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1845–AA07

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: We amend the regulations governing student eligibility for the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (title IV, HEA programs). These programs include the Federal Pell Grant Program, the campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) Programs), the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Family Education Loan (FFEL) Program, and the Leveraging Educational Assistance Partnership (LEAP) Program (formerly called the State Student Incentive Grant (SSIG) Program). The regulations implement changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1998 (Public Law 105–244, enacted October 7, 1998) (1998 Amendments).

DATES: These regulations are effective July 1, 2000.

Implementation Date: The changes to §§ 668.32 and 668.38 reflect statutory provisions that already are in effect. Institutions may use these regulations prior to July 1, 2000 as guidance in complying with those statutory provisions.

FOR FURTHER INFORMATION CONTACT: Lloyd Horwich, U.S. Department of Education, 400 Maryland Avenue, S.W., ROB–3, Room 3045, Washington, D.C. 20202–5344. Telephone (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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.

SUPPLEMENTARY INFORMATION: On July 16, 1999, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (64 FR 38504) proposing to amend the regulations governing student eligibility for the title IV, HEA programs. In the preamble to the NPRM, we discussed the following proposed changes:

- Amending § 668.32(e) to allow a student who completes a secondary school education in a home school that is treated as a home school or private school under State law to be eligible to receive title IV, HEA program funds.
- Amending § 668.32(h) to provide that a student file his or her Statement of Educational Purpose with the Department.
- Amending § 668.32(k)(7) to reflect the name-change of the SSIG program to the LEAP program.
- Amending § 668.32 by adding as § 668.32(l) a cross-reference to the student eligibility criteria concerning drug convictions described in proposed § 668.40.
- Amending § 668.38 to provide the conditions under which a student enrolled in telecommunications courses will not be considered enrolled in correspondence courses.
- Adding § 668.40 to provide the conditions under which a student who has been convicted under Federal or State law of possession or sale of illegal drugs will be ineligible to receive title IV, HEA program funds.

There are no significant differences between the NPRM and these final regulations, except that these final regulations clarify the status under § 668.40 of determinations or adjudications for possession or sale of illegal drugs arising out of a juvenile proceeding.

Discussion of Student Financial Assistance Regulations Development Process

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under title IV of the HEA, we obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, we must conduct a negotiated rulemaking process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless we reopen that process or explain any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on July 16, 1999 in conformance with the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of the committee dissented from the agreed-upon language. We invited comments on the proposed regulations by September 14, 1999, and 18 comments were received. An analysis of the comments and of the changes in the proposed regulations follows.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes and suggested changes the law does not authorize us to make.

Analysis of Comments and Changes

Section 668.32 Student Eligibility-General

Home-schooled students

Comments: A number of commenters specifically supported our statement in the NPRM that a student who completes a secondary school education in a home school setting that is treated as a home school or private school under State law simply must satisfy the home-school completion requirements of the State in which the student was home schooled to be eligible for title IV, HEA program funds.

Changes: None.

Comments: A number of commenters specifically supported our statement in the NPRM that the Secretary will allow a home-schooled student to self-certify his or her eligibility in the same way a high school graduate or General Equivalency Degree (GED) recipient may.

Changes: None.

Comments: The Department should clarify the meaning of ''exemption from compulsory attendance requirements under State law'' in proposed § 668.32(e)(4)(ii).

Discussion: ''Exemption from compulsory attendance requirements under State law,'' means that the State does not consider a home-schooled student to be in violation of the State's truancy laws.

Changes: None.

Comments: The Department should clarify whether home-schooled students must take an ability-to-benefit test to be eligible to receive Title IV, HEA program funds under proposed § 668.32(e).

Discussion: Home-schooled students who satisfy the requirements of § 668.32(e)(4) are eligible to receive title IV, HEA program funds. They are not required to take an ability-to-benefit test.

Changes: None.

Section 668.38 Enrollment in Telecommunications and Correspondence Courses

Comments: The Department should clarify the status under proposed § 668.38 of students enrolled in telecommunications courses at institutions described in section

521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act.

Discussion: Students enrolled in telecommunications courses at institutions described in section 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act are considered to be enrolled in correspondence courses.

Changes: None.

Section 668.40 Suspension of eligibility for drug-related offenses

Comments: The Department should clarify that the provisions of § 668.40 apply only to a student's eligibility for title IV, HEA program funds for award years beginning on or after July 1, 2000.

Discussion: The provisions of § 668.40 apply only to a student's eligibility for title IV, HEA program funds for award years beginning on or after July 1, 2000. However, convictions that occur before July 1, 2000 may affect a student's eligibility for title IV, HEA program funds as of July 1, 2000. For example, a student convicted for the first time for possession of a controlled substance on February 1, 2000 will be ineligible from July 1, 2000 (the effective date of the regulations) until February 1, 2001 (one year from the date of conviction).

Changes: None.

Comments: Clarify whether a conviction for multiple counts of possession or multiple counts of sale is considered a single conviction.

Discussion: A conviction for multiple counts of possession or multiple counts of sale is considered a single conviction. Also, a determination or adjudication arising out of a juvenile proceeding is not a conviction for purposes of this regulation.

Changes: Section 668.40(a)(2) is changed to reflect the above clarification concerning juvenile violations.

Comments: The Department should clarify the meaning of ''indefinite'' under §§ 668.40(b)(1)(iii) and (b)(2)(ii), concerning the ineligibility period of a student convicted three or more times for possession of illegal drugs or two or more times for sale of illegal drugs.

Discussion: For purposes of this regulation, ''indefinite'' means permanent, unless (1) the student completes an approved drug rehabilitation program described in § 668.40(d) or (2) convictions are reversed, set aside, or removed from the student's record so that the student has fewer than three convictions for possession and fewer than two convictions for sale remaining on his or her record, in which case the student's ineligibility period would be determined by the number and type of remaining convictions.

Changes: None.

Comments: An institution should not be required to be involved in determining a student's eligibility for title IV, HEA program funds under this regulation.

Discussion: We will not require institutions to question their applicants for title IV, HEA program funds about drug convictions. We intend to use the aid application process—the Free Application for Federal Student Aid (FAFSA) and the Student Aid Report (SAR)—to collect the necessary information from applicants. However, we will encourage students to notify their financial aid office if their eligibility status changes.

Changes: None.

Comments: An institution should not be liable for funds disbursed to a student when the student is ineligible under this regulation and the institution is not aware the student is ineligible.

Discussion: An institution will not be liable for funds disbursed to a student who is ineligible under this regulation if the institution is unaware at the time of disbursement that the student is ineligible.

Changes: None.

Comments: Students who regain their eligibility under this regulation during a payment or enrollment period should be eligible for aid for the entire payment period (in the case of Pell Grants, FSEOG, FWS, or Perkins Loans) or the entire enrollment period (in the case of Direct or FFEL Loans). Similarly, students who lose their eligibility during a payment or enrollment period should not forego funds until the beginning of the next payment or enrollment period.

Discussion: Students who regain eligibility under this regulation during a payment period will be eligible to receive Pell Grants, FSEOG, FWS, or Perkins Loans for the entire payment period, and will be eligible to receive Direct or FFEL Loans for the entire enrollment period.

However, students who lose eligibility during a payment period will be immediately ineligible to receive subsequent disbursements of any title IV, HEA program funds, and will be required to repay any title IV, HEA program funds that they receive after losing their eligibility. Those students will not be considered to have been ineligible for funds disbursed to them prior to their loss of eligibility. Institutions will not have to recalculate students' awards on a pro-rata basis.

Changes: None.

Comments: Students should be allowed to self-certify both their eligibility under this regulation for title IV, HEA program funds and the renewal of their eligibility during a payment period.

Discussion: We will allow students to self-certify their eligibility for title IV, HEA program funds on the FAFSA or SAR. We also will allow institutions to disburse funds to students who regain eligibility during a payment period or enrollment period, based on students' self-certification to the institution. Students may not self-certify their eligibility based on projected eligibility dates (i.e., students who will regain eligibility during a payment period may not self-certify at the beginning of the payment period that they are eligible, even though as discussed above, students who regain eligibility during a payment period will be eligible to receive funds for the entire payment period or enrollment period, as appropriate), nor may institutions disburse funds based on projected eligibility dates, but institutions will not be responsible for verifying the accuracy of students' self-certifications.

Changes: None.

Comments: The regulation should not be overly restrictive in defining what is an acceptable drug rehabilitation program.

Discussion: We agree, and believe that § 668.40(d) addresses this concern.

Changes: None.

Comments: The Department should provide individualized advice to students on the meaning of this regulation.

Discussion: We will provide guidance to students and institutions over the coming months concerning this regulation.

Changes: None.

Executive Order 12866

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined are necessary to administer this program effectively and efficiently.

In assessing the potential costs and benefits of this regulatory action—both quantitative and qualitative—we have determined that the benefits justify the costs. We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the potential costs and benefits of this regulatory action in the preamble to the NPRM.

Paperwork Reduction Act of 1995

These proposed regulations do not contain any information collection requirements.

Assessment of Educational Impact

In the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available. Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document in text or Adobe Portable Document Format (PDF) on the Internet at the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/legislation/HEA/rulemaking/

http://ifap.ed.gov/csb__html/fedlreg.htm

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at the first of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, D.C., area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

(Catalog of Federal Domestic Assistance numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Consolidation Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 LEAP; and 84.268 William D. Ford Federal Direct Loan Programs)

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Student aid, Reporting and recordkeeping requirements.

Dated: October 18, 1999.

Richard W. Riley,

Secretary of Education.

The Secretary amends part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 is amended to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

2. Section 668.32 is amended as follows:

A. In paragraph (e)(2), by removing ''or'';

B. In paragraph (e)(3), by adding ''or'' after the semi-colon;

C. By adding a new paragraph (e)(4) to read as follows;

D. In paragraph (h), by removing '', or in the case of a loan made under the FFEL Program, with the lender'';

E. In paragraph (j), by removing the ''and'' after the semi-colon;

F. In paragraph (k)(7), by removing ''SSIG'' and adding in its place, ''LEAP,'' by removing the period at the end of the paragraph and adding in its place a semi-colon, and adding ''and'' after the semi-colon; and

G. By adding paragraph (l) to read as follows.

§ 668.32 Student eligibility—general.

* * * * *

(e) * * *

(4) Was home-schooled, and either—

(i) Obtained a secondary school completion credential for home school (other than a high school diploma or its recognized equivalent) provided for under State law; or

(ii) If State law does not require a home-schooled student to obtain the credential described in paragraph (e)(4)(i) of this section, has completed a secondary school education in a home school setting that qualifies as an exemption from compulsory attendance requirements under State law;

* * * * *

(l) Is not ineligible under § 668.40.

* * * * *

3. Section 668.38 is amended by revising paragraph (b) to read as follows:

§ 668.38 Enrollment in telecommunications and correspondence courses.

* * * * *

(b)(1) For purposes of this section, a student enrolled in a telecommunications course at an institution of higher education is not enrolled in a correspondence course, if—

(i) The student is enrolled in a program that leads to a certificate for a program of study of 1 year or longer, or an associate, bachelor, or graduate degree; and

(ii) The number of telecommunications and correspondence courses the institution offered during its latest completed award year was fewer than 50 percent of all the courses the institution offered during that same year.

(2) For purposes of paragraph (b)(1) of this section, an institution of higher education is one—

(i) That is not an institute or school described in section 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Act; and

(ii) At which at least 50 percent of the programs of study offered by the institution during its latest completed award year led to an associate, bachelor, or graduate degree.

(3) For purposes of paragraph (b)(1)(ii) of this section, the institution must calculate the number of courses using the provisions contained in 34 CFR 600.7(b)(2).

4. Section 668.40 is added to read as follows:

§ 668.40 Conviction for possession or sale of illegal drugs.

(a)(1) A student is ineligible to receive title IV, HEA program funds if the student has been convicted of an offense involving the possession or sale of illegal drugs for the period described in paragraph (b) of this section. However, the student may regain eligibility before that period expires under the conditions described in paragraph (c) of this section.

(2) For purposes of this section, a conviction means only a conviction that is on a student's record. A conviction that was reversed, set aside, or removed from the student's record is not relevant for purposes of this section, nor is a determination or adjudication arising out of a juvenile proceeding.

(3) For purposes of this section, an illegal drug is a controlled substance as defined by section 102(6) of the Controlled Substances Act (21 U.S.C. 801(6)), and does not include alcohol or tobacco.

(b)(1) *Possession.* Except as provided in paragraph (c) of this section, if a student has been convicted—

(i) Only one time for possession of illegal drugs, the student is ineligible to receive title IV, HEA program funds for one year after the date of conviction;

(ii) Two times for possession of illegal drugs, the student is ineligible to receive title IV, HEA program funds for two years after the date of the second conviction; or

(iii) Three or more times for possession of illegal drugs, the student is ineligible to receive title IV, HEA program funds for an indefinite period after the date of the third conviction.

(2) *Sale.* Except as provided in paragraph (c) of this section, if a student has been convicted—

(i) Only one time for sale of illegal drugs, the student is ineligible to receive title IV, HEA program funds for two years after the date of conviction; or

(ii) Two or more times for sale of illegal drugs, the student is ineligible to receive Title IV, HEA program funds for an indefinite period after the date of the second conviction.

(c) If a student successfully completes a drug rehabilitation program described in paragraph (d) of this section after the student's most recent drug conviction, the student regains eligibility on the date the student successfully completes the program.

(d) A drug rehabilitation program referred to in paragraph (c) of this section is one which—

(1) Includes at least two unannounced drug tests; and

(2)(i) Has received or is qualified to receive funds directly or indirectly under a Federal, State, or local government program;

(ii) Is administered or recognized by a Federal, State, or local government agency or court;

(iii) Has received or is qualified to receive payment directly or indirectly from a Federally- or State-licensed insurance company; or

(iv) Is administered or recognized by a Federally- or State-licensed hospital, health clinic or medical doctor.

(Authority: 20 U.S.C. 1091(r))

[FR Doc. 99–27673 Filed 10–21–99; 8:45 am]

BILLING CODE 4000–01–U

Reader Aids

Federal Register

Vol. 64, No. 204

Friday, October 22, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids	**202–523–5227**
Laws	**523–5227**
Presidential Documents	
Executive orders and proclamations	**523–5227**
The United States Government Manual	**523–5227**
Other Services	
Electronic and on-line services (voice)	**523–4534**
Privacy Act Compilation	**523–3187**
Public Laws Update Service (numbers, dates, etc.)	**523–6641**
TTY for the deaf-and-hard-of-hearing	**523–5229**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service for notification of recently enacted Public Laws. To subscribe, send E-mail to

listserv@www.gsa.gov

with the text message:

subscribe PUBLAWS-L your name

Use listserv@www.gsa.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, OCTOBER

53179–53580 1
53581–53882 4
53883–54198 5
54199–54498 6
54499–54758 7
54759–55114 8
55115–55404 12
55405–55614 13
55615–55808 14
55809–56130 15
56131–56250 18
56251–56398 19
56399–56668 20
56669–56944 21
56945–57360 22

CFR PARTS AFFECTED DURING OCTOBER

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:
4865 (*See* Memorandum of April 16, 1999) 53883
4865 (*See* Memorandum of September 24, 1999) 55809
6763 (See Proclamation 7235) 55611
7227 53877
7228 54193
7229 54195
7230 54197
7231 54755
7232 54757
7233 54759
7234 55405
7235 55611
7236 55613
7237 55615
7238 55617
7239 55619
7240 56393
7241 56397
7242 56665

Executive Orders:
11145 (Amended by EO 13138).....53879
11183 (Amended by EO 13138).....53879
11287 (Amended by EO 13138).....53879
12131 (Amended by EO 13138).....53879
12196 (Amended by EO 13138).....53879
12216 (Amended by EO 13138).....53879
12345 (Amended by EO 13138).....53879
12367 (Amended by EO 13138).....53879
12382 (Amended by EO 13138).....53879
12473 (Amended by EO 13140).....55115
12484 (See EO 13140 55115
12550 (See EO 13140) 55115
12586 (See EO 13140) 55115
12708 (See EO 13140) 55115
12767 (See EO 13140) 55115
12852 (Revoked by EO 13138).....53879
12871 (Amended by EO 13138).....53879
12876 (Amended by EO 13138).....53879
12882 (Amended by EO 13138).....53879
12888 (See EO 13140) 55115
12900 (Amended by EO 13138).....53879
12905 (Amended by EO 13138).....53879
12936 (See EO 13140) 55115
12960 (See EO 13140) 55115
12961 (Revoked by EO 13138).....53879
12978 (See Notice of October 19, 1999).....56667
12994 (Amended by EO 13138).....53879
13010 (Revoked in part by EO 13138) 53879
13017 (Revoked by EO 13138).....53879
13021 (Amended by EO 13138).....53879
13037 (Revoked by EO 13138).....53879
13038 (Revoked by EO 13138).....53879
13050 (Revoked by EO 13138).....53879
13062 (Superseded in part by EO 13138) 53879
13086 (See EO 13140) 55115
13115 (Amended by EO 13138).....53879
13138 53879
13139 54175
13140 55115

Administrative Orders:
Memorandums:
April 16, 1999 53883
September 24, 1999.....55809

Notices:
Notice of October 19, 1999 56667

Presidential Determinations:
No. 99–38 of September 21, 1999 53573
No. 99–39 of September 21, 1999 53575
No. 99–40 of September 21, 1999 53577
No. 99–41 of September 22,

1999 53579
No. 99–42 of September 29, 1999 54499
No. 99–43 of September 30, 1999 54501
No. 99–44 of September 30, 1999 54503
No. 99–45 of September 30, 1999 53505

5 CFR

532....53179
831....53581
842....53581
870....54761
1201....54507

7 CFR

56....56945
210....55407
215....55407
220....55407
235....55407
245....55407
246....56669
301....55811, 56948
735....54508
915....53181
923....53885
944....53181
984....56131
997....56133
998....56133
999....56133
1000....53885
1001....53885
1002....53885
1004....53885
1005....53885
1006....53885
1007....53885
1012....53885
1013....53885
1030....53885
1032....53885
1033....53885
1036....53885
1040....53885
1044....53885
1046....53885
1049....53885
1050....53885
1064....53885
1065....53885
1068....53885
1076....53885
1079....53885
1106....53885
1124....53885
1126....53885
1131....53885
1134....53885
1135....53885
1137....53885
1138....53885
1139....53885
1755....53886
2003....56399
3570....56399

8 CFR

3....56135

Proposed Rules:

Ch. 1....54794

9 CFR

3....56142
77....56399
94....55812, 55813
303....56400
304....56400
307....56400
308....56400
312....56400
314....56400
317....53186
327....56400
331....56400
350....56400
381....53186, 56400
416....56400

10 CFR

20....54543, 55524
50....53582
72....53582, 56114
431....54114
600....56418

Proposed Rules:

2....55176
20....56274
50....53270, 56476

11 CFR

110....55125

Proposed Rules:

100....55440
102....55440
104....55440

12 CFR

4....56949
204....53617
211....56949
262....53188
347....56949
602....54511
612....55621
614....55621
615....56675
618....55621
701....56953
741....56148
910....55125

Proposed Rules:

714....55866
724....55871
745....55871
1750....56274

13 CFR

Proposed Rules:

121....55873, 57188

14 CFR

25....54761
36....55598
39....53189, 53191, 53193, 53620, 53621, 53623, 53625, 54199, 54200, 54202, 54512, 54513, 54515, 54517, 54518, 54763, 54767, 54769, 54770, 54773, 54774, 55407, 55409, 55411, 55413, 55414, 55416, 55621, 55624, 55815, 56151, 56158, 56158, 56159, 56161, 56163, 56420, 56422, 56424, 56426, 56957, 56959, 56960, 56962, 56963
71....53627, 53887, 53888, 53889, 53890, 53891, 53892, 53893, 53894, 53895, 53896, 53898, 53899, 54203, 54204, 54205, 54206, 55131, 55815, 55816, 55817, 55818, 55819, 55820, 56251, 56428, 56429, 56676
93....53558
97....55132, 55133, 55135

Proposed Rules:

Ch. 1....56275
11....56708
39....53275, 53951, 53953, 54227, 54229, 54230, 54232, 54234, 54237, 54239, 54240, 54242, 54246, 54248, 54249, 54580, 54582, 54584, 54587, 54589, 54591, 54594, 54596, 54598, 54795, 54797, 54799, 54801, 54804, 54808, 54811, 54815, 54818, 54822, 54826, 54829, 54833, 55177, 55181, 55184, 55188, 55191, 55195, 55196, 55197, 55200, 55204, 55207, 55211, 55440, 55636, 55638, 55640, 55642, 55644, 56276, 56279, 56281, 56709, 56712, 56715
71....53956, 53957
91....56708
121....56708
135....56708
145....56708
193....53958
450....54448

15 CFR

774....54520
902....54732, 55821
2014....56429

Proposed Rules:

30....53861
732....53854
740....53854
743....53854
748....53854
750....53854
752....53854
758....53854
762....53854
772....53854

16 CFR

Proposed Rules:

436....57294
453....56717

17 CFR

210....53900
228....53900
229....53900
230....53900
232....56430
239....53900, 56430
240....53900
249....53900, 56430
259....56430
260....53900
269....56430
274....56430

Proposed Rules:

210....55648
228....55648
229....55648
240....55648

18 CFR

2....54522
157....54522
284....54522
380....54522
385....54522, 56172

Proposed Rules:

281....56982
385....53959

19 CFR

24....56433
122....53627
159....56433
174....56433

20 CFR

Proposed Rules:

404....55214
422....55216
718....54966
722....54966
725....54966
726....54966
727....54966

21 CFR

Ch. II....54794
3....56441
5....56441
10....56441
20....56441
25....56454
50....54180, 56441
56....56441
58....56441
173....56172
178....53925
207....56441
310....56441
312....54180, 56441
316....56441
558....53926
600....56441
601....56441
607....56441
610....56441
640....56441
660....56441
878....53927
900....53195

Proposed Rules:

5....53281
25....53281
314....53960
500....53281
510....53281
558....53281
601....53960
880....53294

22 CFR

Ch. V....54538
40....55417
42....55417
171....54538
514....53928

Proposed Rules:

194....53632

24 CFR

200....53930, 55828

203 56108
234 56108
882 53868
888 ....53450, 56894
902 56676
903 56844
964 56870
982 ....56882, 56894
Proposed Rules:
964 56890

25 CFR

516 54541
Proposed Rules:
151 55878

26 CFR

1 55137
301 56246
Proposed Rules:
1 ....54836, 56246, 56718
25 56179

27 CFR

1 54776
47 55625
55 55625

28 CFR

Ch. I 54794
Proposed Rules:
571 53872

29 CFR

4044 55828

30 CFR

202 56454
206 56454
250 53195
948 53200
950 53202
Proposed Rules:
250 53298
901 55878
904 56179
915 54840
916 56982
936 56983
946 54843
948 54845

32 CFR

700 56062
1800 53769
Proposed Rules:
199 56283
806 56181

33 CFR

100 ....53208, 53628, 55829, 55830
117 ....53209, 54776, 55137, 55419, 55831, 56252, 56677
165 ....55138, 55420
187 56965
Proposed Rules:
Ch. I 56286
20 53970
100 ....54847, 54849
117 55217
165 ....54242, 54963
175 53971
181 56287
183 56287
207 55441

34 CFR

602 56612
668 57356
Proposed Rules:
75 54254
614 57288

36 CFR

13 56455
1275 56678
Proposed Rules:
217 ....59074, 56293
219 ....59074, 56293

37 CFR

Proposed Rules:
1 53772
3 53772
5 53772
10 53772

38 CFR

3 54206
17 54207
Proposed Rules:
20 53302

39 CFR

776 56253
Proposed Rules:
111 54255

40 CFR

52 ....53210, 53931, 54559, 55139, 55141, 55421, 55831
61 53212
62 55141
63 56173
76 55834
81 55421
180 ....54218, 54777, 54779, 55838, 56464, 56678, 56681, 56690, 56697
201 55141
261 ....56256, 56469
262 56469
268 56469
271 ....55142, 55153, 55629, 56173
300 ....53213, 53629, 56966
Proposed Rules:
49 54851
52 ....53303, 53973, 54600, 54601, 54851, 55219, 55220, 55442, 55662, 55667, 55879, 56181
76 55880
81 55442
85 56985
86 56985
122 53304
123 53304
124 53304
130 53304
131 53304
132 53632
147 56986
165 56918
180 56477
194 56185
197 53304
258 53976
261 ....55443, 55880
264 54604
271 ....55222, 55671
300 56992
710 56998

41 CFR

51-2 55841
51-5 55841

42 CFR

121 56650
Proposed Rules:
8 56294
57 54263
58 54263
447 54263

43 CFR

1820 53213
3500 53512
3510 53512
3520 53512
3530 53512
3540 53512
3550 53512
3560 53512
3570 53512
3800 53213
Proposed Rules:
2800 55452
2880 55452

44 CFR

62 56174
64 56256
65 ....53931, 53933, 53936
67 ....53938, 53939
206 55158
Proposed Rules:
67 ....53980, 53982

45 CFR

96 55843
Proposed Rules:
302 55074
303 55074
304 55074
305 55074
308 55102

46 CFR

1 53220
2 53220
4 53220
10 ....53220, 53230
12 53230
15 53220
27 56257
31 53220
34 53220
38 53220
52 53220
53 53220
54 53220
56 53220
57 53220
58 53220
59 53220
61 53220
63 53220
64 53220
67 53220
68 53220
69 53220
76 53220
91 53220
95 53220
98 53220
105 53220
107 53220
108 53220
109 53220
118 53220
125 53220
133 53220
147 53220
151 53220
153 53220
160 53220
161 53220
162 53220
167 53220
169 53220
177 53220
181 53220
189 53220
193 53220
197 53220
199 53220
204 54782
Proposed Rules:
5 53970
15 56720

47 CFR

Ch. I 54561, 55671
0 ....55161, 55425, 56269
1 53231
13 53231
20 54564
22 ....53231, 54564
64 ....53242, 53944, 54577, 55163, 55164, 56177
73 ....54224, 54225, 54783, 54784, 54785, 54786, 55172, 55173, 55174, 55434, 56703, 56704, 56974
80 53231
87 53231
90 53231
95 53231
97 53231
101 53231
Proposed Rules:
54 53648
61 53648
69 53648
73 ....53655, 54268, 54269, 54270, 55222, 55223, 55452, 55453, 56723, 56724, 56999
76 54854

48 CFR

Ch. 19 54538
1 53264
15 53264
19 53264
52 53264
201 56704
209 55632
211 55632
213 56704
214 55632
237 53447
252 55632
415 54963
Proposed Rules:
204 56724
252 56724
909 55453
970 55453

1804 54270
1812 54270
1852 54270
9903 56296

49 CFR

Ch. III 56478
1 56270
71 56705
172 54730
192 56878
1002 53264
1003 53264
1007 53264
1011 53264
1012 53264
1014 53264
1017 53264
1018 53264
1019 53264
1021 53264
1034 53264
1039 53264
1100 53264
1101 53264
1103 53264
1104 53264
1105 53264
1113 53264
1133 53264
1139 53264
1150 53264
1151 53264
1152 53264
1177 53264
1180 53264
1184 53264

Proposed Rules:

71 55892
192 56725
195 56725
661 54855

50 CFR

17 ....56582, 56590, 56596
216 53269
222 ....55858, 55860
223 ....55434, 55858, 55860
600 54786
635 ....53949, 54577, 55633, 56472
648 ....54732, 55821
660 ....54786, 56177
679 ....53630, 53950, 54225, 54578, 54791, 54792, 55438, 55634, 55865, 56271, 56272, 56473, 56474, 56475

Proposed Rules:

17 ....53655, 55892, 56297
216 ....56298, 57010, 57026
227 56297
648 55688
660 ....54272, 55689, 56479
679 ....53305, 56481

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 OCTOBER 22, 1999

AGRICULTURE DEPARTMENT

Acquisition regulations:
- Simplified acquisition procedures; published 8-23-99

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Natural gas companies (Natural Gas Act):
- Energy facility applications; collaborative procedures; published 9-22-99

Practice and procedure:
- Off-the-record communications; published 9-22-99
- Correction; published 10-18-99

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- Pennsylvania; published 8-23-99

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Telecommunications Act of 1996; implementation—
  - Access charge reform; local exchange carriers price cap performance review; published 9-22-99

Radio services, special:
- Fixed microwave services—
  - 37.0-38.6 and 38.6-40.0 bands; licensing by Economic Areas; published 8-23-99

FEDERAL DEPOSIT INSURANCE CORPORATION

Foreign banks, U.S. branches and agencies; extended examination cycle; published 10-22-99

FEDERAL RESERVE SYSTEM

Foreign banks, U.S. branches and agencies; extended examination cycle; published 10-22-99

TRANSPORTATION DEPARTMENT

Coast Guard

Boating safety:
- Vessel identification system—
  - State vessel titling systems; guidelines; published 10-22-99

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:
- Lamps, reflective devices, and associated equipment—
  - Headlamp concealment devices; published 8-23-99

TREASURY DEPARTMENT

Comptroller of the Currency

Foreign banks, U.S. branches and agencies; extended examination cycle; published 10-22-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Olive oil promotion, research, and information order; comments due by 10-25-99; published 8-26-99
- Referendum procedures; comments due by 10-25-99; published 8-26-99

Oranges, grapefruit, tangerines, and tangelos grown in—
- Florida; comments due by 10-27-99; published 9-27-99

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Hawaiian and territorial quarantine notices:
- Baggage inspection for domestic flights from Puerto Rico to U.S. Virgin Islands; comments due by 10-29-99; published 8-30-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - North Pacific groundfish; comments due by 10-29-99; published 10-14-99
  - Pollock; comments due by 10-29-99; published 10-20-99
- Caribbean, Gulf, and South Atlantic fisheries—
  - Pelagic sargassum habitat in South Atlantic; comments due by 10-25-99; published 8-26-99
- Northeastern United States fisheries—
  - Northeast multispecies; comments due by 10-28-99; published 9-13-99
- West Coast States and Western Pacific fisheries—
  - Pacific Coast groundfish; comments due by 10-25-99; published 10-8-99

COMMODITY FUTURES TRADING COMMISSION

Commodity Exchange Act:
- Electronic signatures by customers, participants, and clients of registrants; comments due by 10-29-99; published 8-30-99

Foreign futures and options transactions:
- Board of trade members; registration or exemption from registration; clarification; comments due by 10-25-99; published 8-26-99
- Foreign firms acting as futures commission merchants or introducing brokers; direct acceptance of orders from U.S. customers without registering with agency; comments due by 10-25-99; published 8-26-99

ENVIRONMENTAL PROTECTION AGENCY

Air pollution; standards of performance for new stationary sources:
- Small municipal waste combustion units—
  - Emission guidelines; comments due by 10-29-99; published 8-30-99
  - New source performance standards; comments due by 10-29-99; published 8-30-99

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- California; comments due by 10-25-99; published 9-23-99

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 10-25-99; published 9-24-99
- Connecticut; comments due by 10-28-99; published 9-28-99
- Maryland; comments due by 10-25-99; published 9-23-99
- Massachusetts; comments due by 10-27-99; published 9-27-99
- New Hampshire; comments due by 10-29-99; published 9-29-99

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
- Colorado; comments due by 10-25-99; published 9-24-99

Hazardous waste program authorizations:
- Vermont; comments due by 10-25-99; published 9-24-99

Hazardous waste:
- Land disposal restrictions—
  - Mercury-bearing wastes; treatment standards; comments due by 10-26-99; published 7-27-99

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Desmedipham; comments due by 10-25-99; published 8-25-99
- Pyridate; comments due by 10-25-99; published 8-25-99

Superfund program:
- National oil and hazardous substances contingency plan—
  - National priorities list update; comments due by 10-25-99; published 9-23-99

Toxic substances:
- Inventory update rule; amendments; comments due by 10-25-99; published 8-26-99

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Integrated interstate universal service and interstate access reform plan covering price cap incumbent local exchange

carriers; comments due by 10-29-99; published 10-4-99

Telecommunications Act of 1996; implementation—

Access charge reform; local exchange carriers price cap performance review; comments due by 10-29-99; published 9-22-99

Radio services, special:

Maritime services—

Privately owned accounting authorities; accounts settlement; streamlining; biennial regulatory review; comments due by 10-25-99; published 9-3-99

Radio stations; table of assignments:

Oregon; comments due by 10-25-99; published 9-16-99

FEDERAL DEPOSIT INSURANCE CORPORATION

Assessments:

Risk classifications; capital component; reporting date change; comments due by 10-25-99; published 9-8-99

FEDERAL RESERVE SYSTEM

Consumer leasing (Regulation M):

Disclosure requirements; delivery by electronic communication; comments due by 10-29-99; published 9-14-99

Electronic fund transfers (Regulation E):

Disclosure requirements; delivery by electronic communication; comments due by 10-29-99; published 9-14-99

Equal credit opportunity (Regulation B):

Disclosure requirements; delivery by electronic communication; comments due by 10-29-99; published 9-14-99

Truth in lending (Regulation Z):

Disclosure requirements; delivery by electronic communication; comments due by 10-29-99; published 9-14-99

Truth in savings (Regulation DD):

Disclosure requirements; delivery by electronic communication; comments due by 10-29-99; published 9-14-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:

Sheep as minor species; comments due by 10-26-99; published 7-26-99

Medical devices

Surgeon's and patient examination gloves; reclassification; comments due by 10-28-99; published 7-30-99

INTERIOR DEPARTMENT

Land Management Bureau

Minerals management:

Mining claims or sites; location, recording, and maintenance; reporting and recordkeeping requirements; comments due by 10-26-99; published 8-27-99

Mining claims or sites; location, recording, and maintenance; comments due by 10-26-99; published 8-27-99

Mining claims or sites; location, recording, and maintenance; reporting and recordkeeping requirements

Correction; comments due by 10-26-99; published 9-8-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Iowa; comments due by 10-25-99; published 10-8-99

West Virginia; comments due by 10-25-99; published 10-8-99

TRANSPORTATION DEPARTMENT

Coast Guard

Anchorage regulations:

Florida; comments due by 10-29-99; published 8-30-99

Drawbridge operations:

Maine; comments due by 10-25-99; published 8-25-99

Regattas and marine parades:

International Tug-of-War; comments due by 10-25-99; published 10-8-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; comments due by 10-25-99; published 8-25-99

Burkhart Grob Luft-Und Raumfahrt GmbH & CO KG; comments due by 10-29-99; published 9-29-99

Cessna; comments due by 10-25-99; published 9-10-99

Pilatus Aricraft Ltd.; comments due by 10-27-99; published 9-28-99

Raytheon; comments due by 10-27-99; published 8-31-99

Saab; comments due by 10-25-99; published 9-23-99

Class D and Class E airspace; comments due by 10-29-99; published 9-14-99

Class E airspace; comments due by 10-25-99; published 9-14-99

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Pipeline safety:

Hazardous liquid transportation—

Underwater abandoned pipeline facilities; comments due by 10-29-99; published 8-30-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

S. 559/P.L. 106–72

To designate the Federal building located at 300 East 8th Street in Austin, Texas as the "J.J. 'Jake' Pickle Federal Building". (Oct. 19, 1999; 113 Stat. 1045)

Last List October 14, 1999

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to www.gsa.gov/archives/publaws-l.html or send E-mail to **listserv@www.gsa.gov** with the following text message:

SUBSCRIBE PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.